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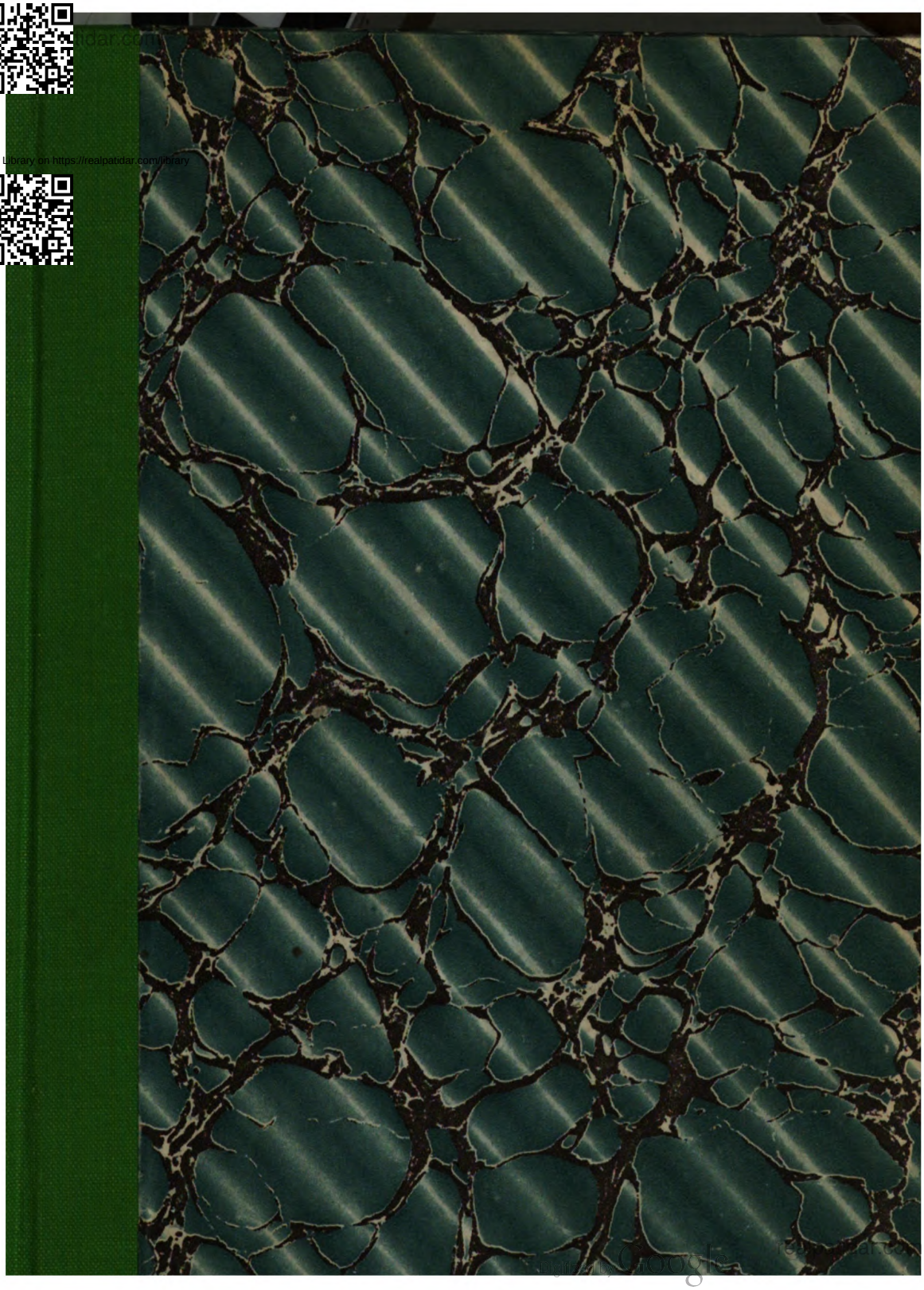

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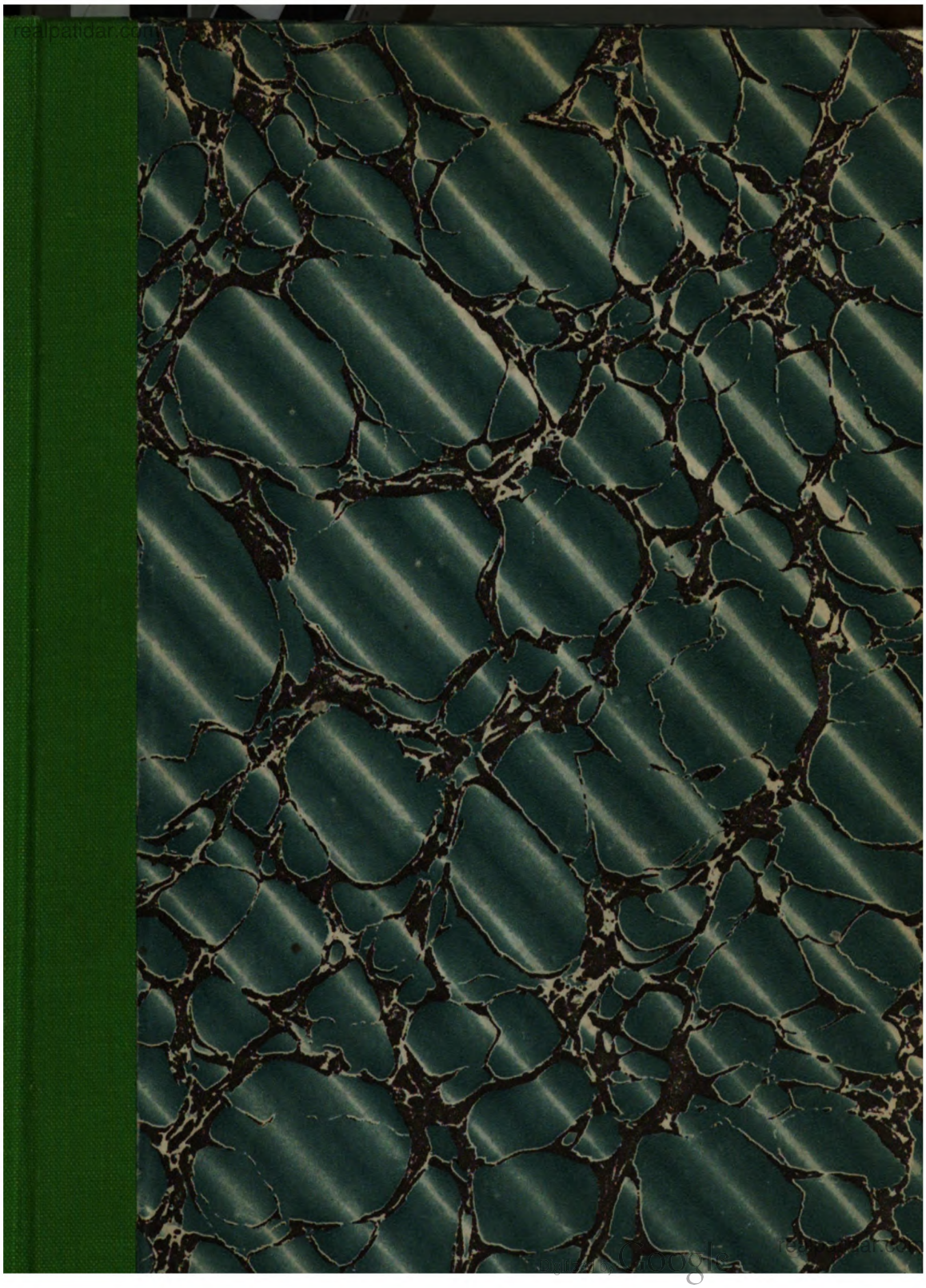

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JUDGMENT

BY

THE HON'BLE SIR JOSEPH ARNOULD

IN

THE KOJAH CASE,

OTHERWISE KNOWN AS

THE AGA KHAN CASE,

Heard in the High Court of Bombay, During April and June, 1866.

(Judgment delivered, 12th November 1866.)

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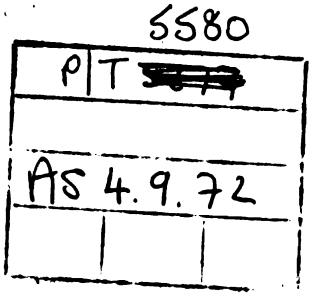

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THE KOJAH CASE.

In the *cause célèbre* tried in the High Court of Bombay before Sir Joseph Arnould in Apri and June 1866, and popularly known as the KHOJAH CASE or AGA KHAN case, the following were the parties :—

The Relators or Plaintiffs were Daya Mahomed, Mahomed Saya, Peer Mahomed Cassumbho and Fazulbhoy Goolam Hoosanee with H. M.'s Advocate General as nominal complainant.

The Defendants were Mahomed Hoosein Hoosanee (otherwise called Aga Khan) Allarucki Soomar, Khakee Pudumsey Dossa Laduck, Mahomed Peerbhoy, Allybhoy Jan, Hubbibhoy Ebrahim Mooraj Premjee, Dhurumsey Poonjabhoy, Noor Mahomed Rajpall, Assoo Gangjee, Nanjee Alo and Mahomed Yooscof Moorgay, Kazi of the Mahomedans of the Town and Island of Bombay.

The Counsel in the case were as follows :—

For the Relators :—Mr. Anstey, Mr. Scoble, and Mr. Macpherson (instructed by M Khunderow Morojee.)

For the first Defendant, His Highness Aga Khan :—Mr. Bayley and Mr. Howard, (inst by Messrs. Keir, Ramsden and Prescott.)

For Allarukia Soomar and seven other Defendants :—Mr. McCulloch and Mr. Gree structed by Messrs. Dallas, Lynch and Langdale.)

For Assoo Gangjee :—Mr. Louis and Mr. Hayllar (instructed by Mr. Venayek Hurryc'

For Dhurumsey Poonjabhoy :—Mr. Taylor (instructed by Mr. Leggett.)

For the Advocate General :—Mr. Ferguson (instructed by the Government Solicitors.

The arguments in the case and the Examination of witnesses lasted twenty-five days. points at issue between the parties are set forth in the Judgment of the learned Judge which fol

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JUDGMENT BY SIR JOSEPH ARNOULD.

THE Hon'ble SIR JOSEPH ARNOULD delivered Judgment on 12th November 1866, as follows :—

(1.) The Information and Bill in this suit has been filed by the Relators and Plaintiffs representing a numerical *minority* of the Khojah community of Bombay against the Defendants, the principal of whom represent a numerical *majority* of the same community.

It prays, among other things, that an account may be taken of all property belonging to, or held in trust for, the Khojah community of Bombay, which may have come to the hands of Allarukia Soomar and Khakee Puddumsey, two of the defendants, as Mukhi and Kamaria (treasurer and accountant) of the said community: that the two last-named defendants may be declared to have ceased to be Mukhi and Kamaria of the community since the 8th of November 1861; and may be ordered to deliver over all the property of the community now in their possession to such persons as the Court shall direct.

The 5th clause of the prayer (which is the most important of the whole) is in these terms: "That it may be declared that the said trust premises" (*i. e.* the public property of the Khojah community of Bombay) "are holden and ought to be applied to and for the *original* charitable, *religious*, and public uses and trusts to or for which the same were dedicated, and intended so to be, and to none other; and to and for the sole benefit of the *Khojah sect*, and none other: and that no person not being a member or having ceased to be a member of the same (*and in particular no person professing Shia opinions in matters of religion and religious discipline*) is entitled unto, or ought to have, any share or interest therein, or any voice in the management thereof."

The 6th clause of the prayer is that a scheme, if necessary, may be settled for carrying into effect the above declaration, and also for the periodical and regular election, from time to time, of the Mukhis and Kamarias of the said community, and generally for the security and management of the property of the said community.

The 7th and last clause of the prayer is, that the first defendant Mahomed Hussain Hooseinee, otherwise called Aga Khan, may be restrained from interfering in the management of the trust property and affairs of the Khojah community, or in the election and appointment of Mukhi and Kamaria; from excommunicating any Khojahs from the said community, or depriving them of the various privileges appertaining to membership; from celebrating marriages in the Jumat Khana; from demanding or receiving from any Khojah any oblation, cess, offerings, &c., in the alleged spiritual or temporal capacity of him the first defendant.

(2.) As already intimated, the 5th clause of this prayer is the most important. It, in effect, raises the question, with which the evidence in this suit has been principally concerned, as to what, in their origin, were the religious tenets of the Khojah community, and what from the beginning, has been the nature of their relations, spiritual or temporal, with the ancestors of the first defendant Aga Khan, who, on his part alleges that he is, and that his ancestors in a long line of hereditary descent, have successively been the Imams or spiritual chiefs of the Shia Imamee Ismailis.

On the one hand, the relators and plaintiffs contend that Pir Surdordin, (whom both sides admit to have originally converted the Khojahs from Hinduism to *some* form of Mahomedanism) was a Suni; that the Kojah community has ever since its first conversion been and now is, Suni; and that no persons calling themselves Kojahs who are not Sunis, are entitled to be considered members of the Khojah community, or to have any share or interest in the public property of the Khojah community or any voice in the management thereof.

On the other side it is maintained by the first defendant, and by the other defendants who are in the same interest with him, that Pir Surdordin was not a Suni but a Shia of the Imamee Ismaili pursuasion; that he was a Dai or missionary of one of the direct lineal ancestors of the first defendant—the Imam or spiritual chief for the time then being of the Imamee Ismailis; that from the time of the first conversion till now the Khojah community has been and still is (with the exception of the relators and plaintiffs and the comparatively few families among the Bombay Khojahs who adhere to them), of the Shia Imamee Ismaeli pursuasion; that the said community (except as aforesaid) always has been bound in close ties of spiritual allegiance to the ancestors of the first defendant Aga Khan, the hereditary chiefs or Imams of the Ismailis, whom the Khojah community always have regarded and (except as above) still regard as their *Moorsheds* or spiritual heads.

(3.) It is to the issue thus raised that the great mass of the voluminous evidence taken in this suit was directed. It was expressly admitted by Mr. Anstey, the very learned and able leading counsel for the relators and plaintiffs, that the determination of this issue would, in effect, dispose of the whole of the present suit. "*I, Khojahs*," he said "*are proved in their origin to have been Sunis, the relators and plaintiffs must succeed: if they are proved to have been originally Shias* or *Shia Imams*

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Ismaelis, or in any way non-Sunis, then the defendants must succeed" An attempt, indeed, was subsequently made, (after Mr. Anstey's return to England had left the conduct of the case in other hands), to recede from the position thus taken ; but, after full consideration and for reasons which I shall have to state elsewhere, I am of opinion that Mr. Anstey's view was the correct one, and that the decision of the Court upon the issue thus raised, must substantially determine the rights of the contending parties on this record.

(4.) The conclusion thus arrived at bears upon a point which it is necessary to dispose of at the outset, the effect, namely, either as a decree or as a precedent of a certain "Declaration of Rights" (set out at length in the 3rd paragraph of the present Information and Bill) pronounced by Sir Erskine Perry in the sittings of the late Supreme Court after the third term of the year 1851.

This "Declaration of Rights" was pronounced by Sir Erskine Perry in a suit, commenced by information and bill on 21st February 1850 between parties, some of whom (as notably the first defendant) were the same parties; and all of whom respectively represented the same interests as those now represented by the relators and plaintiffs on the one side and the first and other the principal defendants on the other side, in the present suit. The information and bill, indeed, in the present suit purports, to be and may be taken as being in continuation of the information and bill in the former suit.

As a *decree* it is quite clear that this expression of judicial opinion is not binding : it was never drawn up as a decree, and, moreover, contains clear internal evidence that it was never intended so to be. Sir Erskine Perry, in the course of his observations, calls it, *as it* has consequently been termed above, a "Declaration of Rights" nd expresses a hope that "the Khojas, by its aid, will able to elect a Mukhi and Kamaria and manage ir caste affairs among themselves, without render- any further application to the court necessary." a *precedent*, I should, from the great learning and y of Sir Erskine Perry, and his known familiarity the history and usages of the native populations ndia, be inclined to pay this expression of judicial ion the highest respect on all points in regard to ich I could treat it as an adjudication upon precise- the same questions as those now before me, and pro- nced upon the same or a very similar state of proved s.

'or instance, upon the question, whether this Court, t is the late Supreme Court on its equity side, has risdiction to entertain this case at all,—regarded as a matter of caste dispute arising in a native community ;— upon *this* question which, as appears from his Declaration of Rights, was expressly raised before Sir Erskine Perry in argument, and decided by him in the affirmative, I shall follow his judgment as a binding precedent.

Upon other points affecting the relative rights of the Khojah community of Bombay and of Aga Khan, the ipal defendant in that suit as in the present suit, I ld not feel bound by Sir Erskine Perry's decision ssI were certified, which, from the nature of the case, have not been and cannot be (no authorized report of the evidence and proceedings in this former suit being in existence), that his decision was arrived at upon the same, or substantially the same evidence, as that which has so exhaustively been adduced before me during the protracted hearing of the present suit, which occupied the court for no less than twenty-four days.

As to the great question in the present suit, that upon the determination of which, as already intimated, the decision of the controversy between these litigants, in my judgment, really turns—the question, namely, whether the Khojahs are, and from the first have been, Sunis or non-Sunis,—subordinate to the Imam of the Ismailis as their spiritual head, or not so subordinate—this does not appear to have been a question upon which Sir Erskine Perry was called upon to pronounce, it is one, certainly, upon which he has not pronounced, any adjudication whatever.

Sir Erskine Perry declared, upon the evidence before him, that certain property and certain privileges belonged to the Khojah community, but he did not decide, nor is there anything to show he ever was called upon to decide, *what are the conditions of full membership in the Khojah community*—whether the circumstance of being a non-Suni (as the Relators and Plaintiffs contend), or of being a Suni and as such disowning spiritual allegiance to the hereditary Imam of the Ismailis (as the first Defendant and those who join with him contend), is to exclude from caste membership in the Khojah community, and to disentitle a man from sharing or having an interest in the public property of the community, or a voice in the management thereof.

(5.) The principal question, then, in the present suit, viz. aye or no, were the Khojahs, in their origin as a separate religious community, Sunis or non-Sunis,—Sunis or Shia Imamee Ismaili,—bound or not bound by ties of spiritual allegiance to the Imams of the Imamee Ismailis—this question is quite untouched by any previous judicial decision.

It is an historical question, to be decided by evidence as to matter of fact, and is quite as much within the competency of the equity side of the late Supreme Court, in the exercise of what is technically called its *charitable* jurisdiction, as any other question of fact arising out of the caste disputes of the Khojah community.

(6.) The cases in which similar questions have been entertained by English courts of equity are well known and were copiously referred to at the bar. They are that class of cases of which the case of Lady Hewley's charities (reported as Shore v. Wilson in 9 Clerk and Finelly (856) is probably the most familiar, and which all proceed upon and illustrate the now well-established principle that, when Courts of Equity, in the exercise of their so-termed *charitable* jurisdiction, are called upon to adjudicate between the conflicting claims of dissident parties in communities held together or distinguished by some religious profession or denomination, the rights of the litigants will be regulated by reference to what upon enquiry turn out to have been the religious tenets and opinions held by the community in its origin or at its foundation.

A minority, however numerically small, holding

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fast by these opinions, will be entitled to prevail against a majority, however numerically large, which can be shown to have receded from or renounced them.

The Khojah community is a community of this kind. The fact of a man's being a Khojah indicates that he holds by some form or other of religious belief. What that form of religious belief was at the origin of the Khojahs as a separate and distinct community, is therefore a question of fact which, if disputed, must be determined by evidence in a court of equity, when asked, in the exercise of what is called its charitable jurisdiction, to decide on the relative rights of the dissident bodies within the same sect.

The relators and plaintiffs have, in several passages of their information and bill, spoken of the Khojahs as a *sect*: they notably do so in the 5th clause of their prayer, in which they ask for a declaration that the public property of the community ought to be applied to the original "*religious*" trusts for which they were originally dedicated, and for the sole benefit of the Khojah "*sect*," and that no person not being a member of such sect, especially that no person professing Shia opinions in matters of *religion* and *religious discipline* is entitled to any share or interest therein.

(7.) Before entering upon the direct investigation as to whether the Khojahs, in their origin as a distinct and separate community, were Sunis or non-Sunis, it will be necessary in order to a due appreciation of the evidence, first to consider the following questions:—

First—*What are the* SUNIS *as distinct from the* SHIAS?

Secondly—*Who and what are the* SHIA IMAMEE ISMAILIS?

Thirdly:—*Who and what is the first defendant* AGA KHAN?

Fourthly—*Who and what (independently of their distinctive religious belief) are the* KHOJAHS, *and what are and have been their relations with the first defendant and his ancestors?*

Fifthly—*What have been the relations of the first defendant,* AGA KHAN, *with the particular community to which the relators, and plaintiffs, belong, viz., the Khojah community of Bombay?*

(8.) First, then, as *to the Sunis and the Shias, and their respective peculiarities of religious opinion and practice.*

The Sunis are the orthodox Mussulmans, the people of the Sonna or Tradition. Their *kulm*, or profession of faith, is the simple one—"There is no God but God and Mahomet is the Apostle of God." To this the Shias add, "and Ali the companion of Mahomet is the Vicar of God."

The elevation of Ali to an almost co-equal position with the Apostle of God himself, may be stated popularly as the great distinctive tenet of the Shias.

Etymologically the word "Shias" means either "Separatists" (which is probably the more correct derivation), or persons who are pure (Shias) from the blood of those members of the family of Ali who early fell victims to the hostility of the Suni Ommeiades, the Caliphs of Damascus.

It will conduce to clearness if I here recall in rapid outline the history of the earliest divisions in Islam.

The Apostle of God died without appointing a "Caliph" or successor.

The Caliph or successor of the Apostle of God (who had been both a temporal and spiritual sovereign) was to succeed him in both these capacities: he was to be both "*Emir-al-Momenin*" or "commander of the true believers" and also "*Imam-al-Moslemin*" or "spiritual chief of the devout"—as we should say in our Latin or Western phrase, "Supreme Pontiff as well as Imperator or temporal ruler."

The general expectation of Islam had been that Ali, the first disciple, the beloved companion of the Apostle of God, the husband of his only surviving child Fatima, would be the first Caliph. It was not so to be. The influence of Ayesha, the young and favourite wife of Mahomet, a rancorous enemy of Fatima and of Ali—procured the election of her own father Abubekr; to Abubekr succeeded Omar, and to him Osman; upon whose death, in the year 655 of our era, Ali was at last raised to the caliphate. He was not even then unopposed; aided by Ayesha, Moawiyah, of the family of the Ommeiades, contested the caliphate with him, and while the strife was still doubtful, in the year A. D. 660, Ali was slain by a Kharegite, or Mussulman fanatic, in the mosque of Cufa, at that time the principal Mahometan city on the right or west bank of the Euphrates,—itself long since a ruin, at no great distance from the ruins of Babylon.

This assassination of Ali caused a profound sensation in the Mahometan world. He was, and deserved to be, deeply beloved, being clearly and beyond comparison the most heroic of that time fertile in heroes—a man brave and wise, and magnanimous and just, and self-denying in a degree hardly exceeded by any character in history. He was besides the husband of the only and beloved child of the Apostle of God, and their two sons Hassan and Hoosein had been the darlings of their grandfather, who had publicly given them the title of "the foremost among the youth of paradise."

Of these sons, Hassan, the eldest, a saint and a recluse, on the death of his father sold his birthright, empire to Moawiyah, for a large annual revenue, which during the remainder of his life he expended in works of charity and religion at Medina. In the year A. D. 669, this devout and blameless grandson of the Apostle of God was poisoned by one of his wives who had been bribed to that wickedness by Yezid, the son of Moawiyah and the second of the Ommeiad Caliphs of Damascus.

There thus remained as head of the direct line of the Apostle of God, Hoosein, the younger son of Fatima and Ali, a brave and noble man, in whom dwelt much of the spirit of his father.

Eleven years after his elder brother's murder, in the year 680 of our era, yielding to the repeated entreaties of the chief Moslem people of Irak Arabi (or Mesopotamia), who promised to meet him with a host of armed supporters, Hoosein set forth from Medina to Cufa to assert his right to the Caliphate against the hated Ommeiades. He crossed the desert with only a feeble train—his wife, his sister Fatima, two of his sons, and a few armed horsemen, when on reaching Kerbela, then a desert station about a day's journey from the west bank of the Euphrates and in the near neighbourhood of Cufa, he found drawn up to meet him a host not of retainers, but of foes. The narrative of what follows is among the most pathetic in all history. The noble son of Ali and Fatima, the favourite grandson of

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the Apostle of God, after deeds of valour romantic even in an Arab of that age, fell pierced through and through with the arrows and javelins of the cowardly assailants who did not dare to come within the sweep of his arm. One of his sons and a nephew had already been slain in his sight. His other son, his wife, and his sister were carried away captive to Damascus. They smote off the head of the son of Ali and paraded it in triumph through the streets of Cufa. As it passed along, the brutal Obiedollah, the governor of the city, struck the mouth of the dead man with his staff. "Ah," cried an aged Mussulman whom horror and just wrath made bold, "What a foul deed is that!—on those lips I have seen the lips of the Apostle of God."

This tragic event stirred the heart of Islam to its very depths, and even now, after the lapse of nearly 1,200 years, it separates, as from the first it separated, the Mahometan world into the two great and hostile divisions of the Sunis and the Shias,—of the Sunis, who bless the memory and are zealous in the cause of Ayesha and Abubekr and Omar and Osman —and of the Shias, who execrate the memory of the three first Caliphs, and, hardly in a less degree, that of Ayesha herself; who by degrees have come to regard Ali as something more than mortal—as not only the Vicar, but in some mystic sense, an Incarnation of God; who venerate Fatima as the first among women; and yearly celebrate the martyrdom of Hoosein not only with the outward signs but with the inward reality of lamentation and mourning and woe.

It was on the 10th day of the month Mohurrum (which happened to coincide with the 9th of October of the year 680 of our aera) that Hoosein fell martyred on the sands of Kerbela. The Mahometan year being lunar, and ours solar, the 10th day of the Mohurrum occurs at various periods of our calendar, but, whenever it comes round, in all parts of Asia where Shias are to be found, it is observed as a day of sorrow and of tears and of beating of the breasts in grief.

In Persia which (with a brief exception under Nadir Shah from A.D.1736 to 1747) has ever since the accession of the Saffevi dynasty at the commencement of the 16th century of our era, been the great Shia empire, and whose population has consequently been able, without dread of Suni persecution, to indulge freely in the expression of its love and sorrow for the martyred son of Ali and Fatima—the celebration of the Mohurrum is a national ceremony of mourning, conducted in the capital of the Sha-in-Sha (king of kings) with a solemn magnificence that, with all its pomp, cannot deaden, or even tone down, the hysterical passion with which even strong and brave men listen to the oft-recited story of the great martyrdom (*see Chardin Potter, Morier, and other travellers in Persia*). In India, where the Shias have always been comparatively few, and the Sunis many and powerful, the Mohurrum is celebrated, by the Sunis, with "riot and ill-managed merriment, with ribald jests, and the coarse antics of mountebanks dressed up in the skins of wild beasts: the Shias, on the other hand, assemble sadly in their houses, or their Imambaras, where they listen with tears and loud sobbings to the pathetic story; or, if they join in the procession at all, and are not interfered with by the regulations of the police (as has latterly been the case in Bombay), they lead along, mourning and beating their breasts as they go, a riderless white horse, representing that from which Hoosein, parched with thirst, dismounted to take his last cup of water at his tent door, when the remorseless and accursed Shamer shot through his lips with an arrow as he drank and mingled his dying blood with the draught.

(*See Ockley's History of the Saracens: Dynasty of the Ommeriad's: Yezid* 1. *Gibbon's Decline and Fall, chap.* 50. *By the* 11*th clause of the Indian Evidence Act II. of* 1855, *the Court* "*on matters of public history, literature, science or art may refer for the purposes of evidence to such published books, maps, &c., as it may deem to be of authority on the subject to which they relate.*")

The neighbourhood of Kerbela is to the Shias, what the neighbourhood of Jerusalem was to early Christendom.

Near Nijuf, a day's journey from the west bank of the Euphrates and about 120 miles south-west of Bagdad, rises *Meshed Ali*, the superb mausoleum of the husband of Fatima, the companion and the son-in-law of the Apostle of God.

About another day's journey to the north-west of Meshed Ali, still on the same or western bank of the great river,—at Kerbela, now a place of considerable size and importance, is *Meshed Hoosein*, the holy sepulchre of Hoosein the "Shehad" or martyr.

These tombs (though standing in the territories of the Suni Turks) have from time to time been adorned with the utmost magnificence by the Shia sovereigns of Persia, and they are constantly attended by a large body of Syuds (descendants of Ali) whose services are largely rewarded by the pious benefactions of the faithful (*see the evidence of witness No. XIX.*)

From all parts of Asia and at all periods of the year a constant stream of Shia pilgrims flows towards these holy tombs. Nor is it the living only who crowd there: the fondest wish of wealthy and pious Shias at the approach of death, is to be buried in the sacred dust that surrounds the tombs of Ali or of Hoosein; and, from the river bank long strings of camels may be seen traversing the sands towards the holy places, laden with the coffins of the devout votaries who are thus making their last pilgrimage to Nijuf or to Kerbela (*Gibbon's Decl. and Fall, ch.* 50, *evidence of witness No. XIX.*)

The sacred dust of Kerbela is made into moulds (called in India *Mohurs*, from their resemblance in shape and size to pieces of coined money), and into strings of large beads. Whenever the Shia prays, which he does three times a day (at sunrise, noon, sunset), not five times a day, as the Sunis do, he is careful to put his Mohor or mould, of the dust of Kerbela on the ground, so that it may meet his forehead in the act of prostration,—and, when in prayer he names the name of God, he touches one of the beads fashioned out of the dust of Kerbela that are strung on his rosary. On more solemn occasions, such as at the new moons, the Ramazan or the Mohurrum, the Shia is in the habit of partaking of a sort of sacramental cup consisting of water mingled with the dust of Kerbela.

In short the whole religious life of the Shia is completely steeped in a current of thoughts, beliefs, tra-

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ditions, and observances, which all have their source in Ali and Fatima, and their two sons Hassan and Hoosein—the four venerated names which, with that of the Apostle of God, compose the *Panchton* (or Pentad) of the *Ala Saba*, or Holy Family of Islam. (*See as to all the above the evidence of the witnesses for the defence passim.*)

Now all this the Sunis regard as so much deplorable superstition. They tell you indeed they respect Ali as the son-in-law of the Apostle of God and as a good man (the solemn cursing of Ali, however, was continued long after the accession to power of the Suni line of the Abasside caliphs, the successors of the Ommeiads (see *Gibbon's Decline and Fall* c. 52); but to revere Ali as the Vicar of God, still more as an Incarnation of God, is utterly abhorrent to all the religious feelings of a pious and orthodox Suni. To go on pilgrimage to Kerbela, to bow the forehead in prayer on moulds made of the dust of Kerbela, to drink, on the great Mahometan anniversaries, water mixed with the dust of Kerbela—these are all practices which a Suni Mussalman shrinks from as so many forbidden superstitions. (*See in addition to the various authorities cited at the bar, the evidence of witness No. XXX., a Suni Mussulman called by the defendants.*)

The Suni prays five times a day; the Shia only three times; the Suni, with his arms folded across his breast; the Shia with his arms held straight down by his side; the Shia venerates Ali and Fatima as something more than mortal, and execrates the memory of Abubekr and Omar and Osman; the Suni pays sincere reverence to these three Caliphs, and introduces their names into the Khootbeh (or Friday prayer), and into the dedicatory inscriptions in his mosques: the Suni, in India at least, celebrates the Mohurrum with ribald buffoonery; the Shia with heartfelt lamentations.

In a word, agreeing in reverencing Mahomet as the Apostle, and the Koran as the word, of God, the Sunis and Shias agree in little else except hating each other with the most cordial and bitter hatred. The quarrel of Ayesha and Fatima is an undying one, and Islam is still divided by the fierce enmities of the respective partizans of the favourite wife, and of the only daughter, of the Apostle of God.

(9.) The next question is, *Who are the Shia Imames Ismailis?* Formally they are those among the Shias who hold Ismail, the *seventh* in descent from Ali to have been the last of the Revealed Imams; and who also hold that, until the final manifestation of Ali who (as an Incarnation of God) is to come before the end of all things to judge the world—the musnud of the Imamate (or in Latin idiom the office of Supreme Pontiff) is rightfully held by an hereditary succession of *unrevealed* Imams, the lineal descendants of Ali through Ismail.

The *revealed* Imams, according to the Ismailis, are these seven:

1. Ali. 2. Hassan. 3. Hoosein. 4. Zeinaledeen (this was that son of Hoosein who survived the massacre of Kerbela). 5. Mohammed Bawker. 6. Jaffir Seeduck. 7. Ismail (who died before his father and is called, from his father's name, Ismail-bin-Jaffir Seeduck.

Under the dominion of the earlier Abassides (the caliphate of the Abassides of Baghdad, extended from A.D. 750 to A.D. 1272) the Ismailis, like all other opponents of the Suni or orthodox faith, were exposed to severe persecution. Their doctrine of the Imamate made them peculiarly obnoxious. As already explained every Caliph, or successor of the Apostle of God, held, as part of his sovereignty, the office of *Imam-al-Moslemin* (supreme Pontiff of the Devout); so that the doctrine of the Ismailis, in the eyes of the Suni princes, was not only heresy in religion, *but treason against the state.*

The result was that, from the beginning, they were compelled to teach and spread their tenets secretly.

In all essentials the Ismailis were Shias, but they held in addition certain peculiar tenets, such as this respecting the Imamate, which would appear to have been first formalized into a regular system (with different ascending degrees of initiation and stages of more or less esoteric doctrine) about the beginning of the 10th century of our era by the famous Abdallah-bin-Maimun, who taught first at Ahwas in the south-west of Persia and afterwards at Salemieh in Syria (*Von Hammer "History of the Assassins," p.* 25. *Dr. Wood's Translation, London*, 1835), Abddallah-bin-Maimun, together with several tenets derived from the Magians or Zoroastrians, is said to have adopted from the Hindu philosophy, and to have engrafted into the higher stages of the Ismailli initiation, certain principles of Pantheism which, by doing away with the notion of a personal God and personal conscious Immortality, are easily represented as involving the doctrine of human non-accountability and even that of the moral indifferency of actions—a reproach frequently brought, but apparently without good reason, against the more esoteric teachings of the Ismaeli system (see Von Hammer, as *also Silvester de Sacy, expose de la Religion des Druzes*, 2 *vols. Paris* 1838).

One of the initiated disciples of Abdallah-bin-Mamun—himself a lineal descendant from Ismail the 7th Imam—the Dai Abdolla—or Obeidollah, about the middle of the 10th century of our era, laid in Africa the foundations of what afterwards became the *Fatimi Caliphate of Cairo*, and which lasted till overthrown by the orthodox Suni Saladin (the chivalrous rival in arms of Cœur de Lion) about the year of Christ 1171.

This Fatimite Caliphate was a *dynasty of Ismailis* it was named after Fatima, the wife of Ali and sole daughter of the Apostle of God, from whom its Caliphs traced their descent through Obeidollah and Ismail the 7th Imam.

In Cairo, under the dominion of the Fatimite Caliphs, the religious system of the Ismailis, with its secret lodges, its many stages of initiation, and its somewhat mystic ceremonies, was matured and perfected.

It is not necessary to go into the details of these developments. Von Hammer's "History of the Assasins" (translated, not with any great felicity by Dr. Wood), Silvestre de Sacy's "Religion of the Druses"; the Dabistan, and other oriental authorities cited at the bar, by the exhaustive industry of Mr. Anstey on the one side and Mr. Howard on the other, supply ample materials for a dissertation on a subject of considerable interest, both historical and theological, for which, however, this is not the place.

Two points, however, connected with this part of the subject have such an important bearing on the main

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question at issue in this case, that they must be noticed with some degree of attention.

These two points are, *first*, the universal prevalence among the Ismailis of the practice of "*Takiah*," or concealment of religious opinion, *secondly*; their method of seeking to make converts by assuming to a great extent the religious stand-point of the person whom they desired to convert, modestly hinting a few doubts and difficulties and then, by degrees, suggesting, as the only possible solution of these, the peculiar tenets of their own system.

As to the *first* point; the word "*Takiah*" was of constant recurrence in the evidence taken in this suit; it was rendered, not perhaps, quite adequately, 'mental reservation;'—its full meaning is something more than that. It is an Arab word, whose root-meaning is "fear or caution:" its full applied meaning is "concealment of a man's own religious opinions and adoption of alien religious forms,"—either from a desire to avoid giving offence or from dread of persecution.

The polite Orientals (the Suni Mussulmans excepted, willingly sacrifice some of their religious scruples and conceal a portion of their religious zeal rather than hurt the feelings of those opposed to them in religious matters. This sort of religious comity is not absolutely confined to the East; even British Protestants of the laxer sort, are, I believe, occasionally known, in Catholic countries, to raise their hats, or otherwise show some token of outward respect, as the more solemn processions of the Romish Church pass by. This is "*Takiah*;" outward conformity, in order to avoid giving offence, or hurting the religious feelings of others.

Of the "*Takiah*" caused by the dread of insult or persecution a familiar and amusing instance may be found in the demeanour of those Shias, who make the adj;—*i. e.* go on pilgrimage to Mecca. In that centre f Suni bigotry and intolerance the Shia pilgrims "out f *Takiah*" abandon their customary times and forms of rayer, praying five times a day with arms crossed, instead f three times a day with arms held straight down to their des. Captain Burton in his very interesting "Pilrimage to Mecca" describes with considerable humour ow the Shia pilgrims even force themselves to pay outard and most reluctant homage to the tombs of Abuekr, Omar and Osman—the bitter foes of their venerated li, and the objects of their own most uncompromising religious hatred (*see Capt. Burton's "Pilgrimage to Mecca" and the evidence of the Shia witness No. XIX., who, however, did not visit the tombs of the three Caliphs.*) This is "*Takiah*," adopted with the view of avoiding persecution, insult, or ill usage for religion's sake.

The peculiar tenets of the Ismailis with regard to the Imamate, imposed upon them a peculiar reason for practicing "*Takiah*" in all countries within the sway of the Suni caliphs; this long enforced habit grew at last into a second nature, and the practice of *Takiah* became universal among the Ismailis—the offspring of persecution and fear.

The other peculiarity of the Ismailis—that, namely, of assuming or admitting the truth of the greater portion of the religious tenets of those whom they wished to convert to their own, is copiously illustrated by Silvestre de Sacy ("*Religion des Druzes*," *vol. i.* "*Introduction*" *p.* 148 *to* 163), citing from an Ismaili work of authority, the *Kitub-al-siyaset*, which contains, among other things, instructions for the proceedings of the *Dais* or missionaries of the Ismailis.

If the *Dai* or missionary has a Shia (not of the Imamee Ismaili persuasion) to deal with, he is to represent himself (as in this case he might do with perfect truth) as a zealous partisan of all the Shia doctrine. He is to dwell with unction on the cruelty and injustice with which the Sunis treated Ali and his sons—on the martyrdom of Hoosein and the captivity of his family. He is to abuse the Suni Caliphs of both lines, the Ommeiades and the Abassides, and then, having thus prepared the way, he is to insinuate as the necessary completion of the Shia system of faith the more esoteric doctrines of the Ismailis.

Is it a Jew he has to deal with?—he is to speak disparagingly of the Christians and the Mussulmans, to agree with his intended convert in still looking forward to a promised Messiah, but by degrees to bring his mind to the persuasion, that this promised Messiah can be none other than Ali, the great Messiah of the Ismaili system.

If it be a Christian he hopes to bring over—he must expatiate on the obstinacy of the Jews and the ignorance of the Mussulmans, must profess reverence for all the chief articles of the Christian creed, but gently hint that they are symbolic, and point to a deeper meaning, to which the Ismaili system alone can supply the key; he may suggest that the Christians have thmewhat misinterpreted the doctrine of the Paraclete, soat a Paraclete there is, and that it is to this—the true Pareclete—that the *Dai*, or missionary, would lead his enquiring friend.

It is needless to pursue these illustrations at greater length.

Two points may be taken as conclusively established with regard to the Ismailis:—

1. That they habitually enjoined and carried out the practice of "*Takiah*," i. e. concealment of their own peculiar views in religion, and outward adoption of religious forms not their own.

2. That their *Dais* or missionaries were directed, as a general rule, to set about the work of making converts by assuming to a great extent the religious standpoint of those whom they wished to bring over to their own faith.

Both these points will be found to have an important bearing on the appreciation of the evidence adduced in this case.

And now we must notice a curious passage in history which connects the principal defendant in this case, Aga Khan with the "*Sheikh el-Jubal*" or "*Old Man of the Mountains*" of Marco Polo, with the Chiefs, or (according to Von Hammer) the hereditary Grand Masters of the *Assassins of Alamut*.

After the Ismaeli system had been elaborately completed at Cairo under the Fatimite Caliphs, receiving there a superstructure of Egyptian Hierophantism upon the basis of Magian and Indian dogma, which it had derived from its Persian founders, it had the fortune, a little after the middle of the 11th century of our—era, about the time that William the Norman was winning the battle of Hastings,—to attract the attention of a very accomplished young Persian of

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Arabian descent and of Shia faith, who had already given promise of a brilliant career.

This was *Hassan-bin-Saba*, the son of a learned Shia doctor of the city of Rhai in Persia.

Hassan-bin-Saba had been carefully trained in all the learning of his time, his great friend and fellow-student being Nizam-ul-Mulk, afterwards the renowned minister of Togrul Beg and of Malek Shah, the two first of the Toorki or Seljukian sultans of Irak, whose seats of empire were Nisabhur and Rhai. In his early manhood Hassan-bin-Saba met with, and had been deeply impressed by the teachings of, a Dai or missionary of the Fatimite Ismailis. An adventurous life of action had weakened, but not effaced, these earlier impressions when, being checked in his career of ambition, by the superior fortunes of his rival Nizam-ul. Mulk, he resolved to repair to Egypt, in order to be instructed at the fountain head in the more esoteric doctrines of the Ismailis.

A three years' residence in Cairo made him an adept and an enthusiast in the Ismaili faith, and he returned to Persia eager to propagate the tenets he had embraced.

Persia, at that time, was in the most rigid bonds of Suni orthodoxy, the Shepherd Chiefs of Central Asia (and such in their origin were the Seljukian Sultans of Irak) having always been among the most devoted upholders of the straitest traditions of Islam.

Hassan-bin-Saba soon found that he could only attempt openly to propagate his new creed at the imminent risk of his life. He formed his plan. Partly by force and partly by fraud he possessed himself of the impregnable mountain stronghold of Alamut (*the Vulture's Nest*) built on a commanding crag of the Elburz mountains—the range that separates from the rest of Persia the provinces that lie immediately to the south of the Caspian.

Here he established himself in the year 1090 of our era (just 700 years, as Von Hammer is careful to inform us, before the commencement of that other great combination (as he views it) against the established order of society—the Constituent Assembly of revolutionary France.)

Here, for 35 of the remaining years of a life which was protracted beyond the age of 90—Hassan-bin-Saba employed all the remarkable powers of his mind in organizing a system of terror which fought with the dagger against the sword, and revenged persecution by *assassination*. He and his successors have the infamous renown of having introdnced *that* word into the vocabularies of Europe. It is likely enough, indeed, that the etymology insisted on by Silvestre de Sacy may be correct, and that the word by which the Ismailis of Alamut and Massiat were designated in the Eastern languages was *Hashishin*—a word derived from the use of the *Hashish* (a preparation of hemp, or bhang), with which Hassan-bin-Saba and his successors subdued the souls, while they inflamed the energies, of the *Fedawi*, "the self-offering or devoted," whom they employed, to use the language of Dryden, as their "blind, unthinking instruments of death." Be this as it may, the word *Assassination* has long been naturalized in all the languages of Europe to signify the vilest sort of murder—murder done to order.

I must resist the temptation of pursuing in further detail the story of the Ismailis of Alamut, whose offshoot the Assassins of Massiat (a corresponding rock-fortress on the mountain range north of Lebanon) were the terror of Syria and Western Asia during the second Crusade. I take up the thread of the narrative where it becomes connected with the principal defendant in this suit, Aga Khan, as it does in the person of Hassan-Ala-Sikrihi-es-Salam (or Blessed-be-his-name) shortened into *Zakaresalam*, the 4th, in succession from Hassan-bin-Saba, of those whom Von Hammer calls "the hereditary Grand Masters of the "Order of the Assassins of Alamut."

The founder himself Hasean-bin-Saba (that is "of the line of Saba,") though a fanatic Ismaili in religion, was not—as his family name shows—an Ismaili by birth: he was not a descendant, either lineal or collateral, from Ismail, the 7th Imam, the son of Jaffir Seeduck.

Hassan-ala-Zakaresalam on the other hand, asserted for himself a direct lineal descent from Ismail the 7th Imam, through Nisar, a son of Mostansir (one of the Fatamite Caliphs of Egypt) who had been brought to Alamut in the time of Hassan-bin-Saba, and whom Zakaresalam declared to have been his progenitor.

Von Hammer, drawing exclusiely, as he admits, from Suni sources, leaves this statement of paternity involved in great doubt and obscurity, which is certainly not cleared up by the passage extracted from the 10th book of the Persian History of which a translation was put in by the relators and plaintiffs (*filed and marked as Exhibit E*): the mystery that hangs about the story seems in some degree to justify the expression of Witness No. 1, when he said that he had come to doubt the validity of Aga Khan's hereditary claims, (from Ali and Ismail, through the Fatimite Caliphs of Cairo ever since he had found that he traced his pedigree through this Zakaresalam.

This is not the place, of course, for any attempt to clear up the obscurity of an Asiatic pedigree (a task which even Gibbon was obliged to renounce as hopeless), but it may be observed in passing that the recorded follies of this Zakaresalam are such as to make it *prima facie* not unlikely that he might really have been a blood descendant from the Fatimite Caliphs of Egypt, among whom are to be found, as notably in the case of Hakim-Biamr Allah, the mad Messiah of the Druses of Lebanon, some of the most fatuous and extravagant of all the Mussulman princes who have ever ruled in any part of the East.*

By one of his proceedings Zakaresalam excited more horror among orthodox Musalmans than had been called forth even by the organized system of assassination established by the chiefs of Alamut. On the 17th day of Ramazan he caused a public pulpit to be raised in the *Mosella*, or place of prayer at the base of the castle of Alamut, and thence proclaimed himself the

* "The Fatimites," says Gibbon, "were either rash or pusillanimous." "Decline and Fall" ch. 52; see Silvester De Sacy's Religion des Druzes.

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Vicegerent of God, abolished all Moslem ordinances of positive religion, declared that that sacred day of the Mahomedan calendar should thenceforth be celebrated as the *Feast of the Revelation of the Imam*, and that the people should then and there (as, from the narrative, they appear to have done without much scruple) eat the flesh of the swine and drink, even to drunkenness, of the juice of the grape.

After a short reign of about four years this self-asserted, and certainly worthy, descendant of Hakim-Biamr-Allah was himself cut off by the dagger, and the hereditary Grand-mastership of the Assassins of Alamut passed through the hands of four successors, (all of whom, with one, probably accidental, exception,) are recorded in the pedigree of Aga Khan (*Exhibit No.* 23) until the year of Christ 1258, when Alamut fell to rise no more (it has ever since been a heap of ruins) under the irresistible might of Holagou, one of the grandsons of the great Zinghis Khan.* Although, by this utter overthrow, in which men, women, and children were unsparingly put to the edge of the sword the Assassins of Alamut ceased to be a terror to Asia, yet the race of the Ismailis still survived in Persia, and the hereditary succession of their *unrevealed* Imams is traced in unbroken line down to Aga Khan, the first defendant in this suit, in the pedigree already referred to (*Exhibit No.* 23). Of these names history knows nothing one indeed, Shah Islam Shah, the 14th in the ascending line from Aga Khan, is currently mentioned by a tradition, very prevalent in the Khojah caste, as the Imam of whom Pir Sudrudin, the converter of the Khojahs, was the missionary or Dai. It appears probable that, from the time the rulers of Persia became Shia, as they did from the establishment of the Saffevi dynasty about the commencement of the 16th century of our era, all active persecution of the Ismailis ceased. After the troublous times of the Affghan invasion and of Nadir Shah, and during the period preceding the rise of the present, or Kajar dynasty, when the Zend princes had the principal power in the south of Persia (say from A.D. 1750 to A.D. 1786), we find that Abool Hassan, the grandfather of Aga Khan, was governor of the very important city of Kerman (*Exhibit* 93).

About the year 1813 Macdonnell Kinneir, as cited by Von Hammer (*History of the Assassins p.* 210-211) notes in his "Topographical History of Persia," that in the district of the Persian highlands (or *Kuhistan*) especially near the ruins of Alamut, are still to be found a remnant of the Ismailis *who go by the name of Hooseinis*, he also remarks that the Ismailis of Persia recognise as their chief an Imam, "dwelling near Kekht" whose descent they deduce from Ismail, the son of Jaffir Seeduck, and that as this Imam according to their doctrine is an emanation from the Diety, the Ismailis, *some of whom are dispersed as far as India, go on pilgrimage "from the banks of the Ganges or Indus" to obtain his benediction.*

These statements, read by the light which the evidence in this case throws upon them, are not without interest. The Hooseinis, who still dwell about the ruins of Alamut are of the race who regard as their Imam the first Defendant in this suit, whose own proper name, as distinct from his titular designation, is "Mahomed Hussain *Hooseini*. The Imam of the "Ismailis dwelling near Kekht," at the time of Macdonnell Kinner's stay in Persia, was Sha Khalilulla, the father of the first defendant. The votaries who went on pilgrimage from India to receive his benedictions, consisted mainly of the Khojahs, who, as we shall soon see, had for a long period of time been in the habit of making pilgrimages to what they called *Durkhana*, i. e. to the head quarters or principal residence for the time being of their *Moorshed* or Spiritual Head, the hereditary Imam of the Ismailis.

(10.) The question *Who is Aga Khan?* has thus already been partly answered. "Mahomed Hussain Hooseinee otherwise Aga Khan," or as he is more formally styled when addressed or mentioned in official documents by the Bombay Government—"His Highness Aga Khan, Mehelati," is the hereditary Chief and unrevealed Imam of the Ismailis—the present or living holder of the Musnud of the Imamate—claiming descent in direct line from Ali, the Vicar of God, though the 7th (and according to the Ismaili creed) the last, of the *Revealed* Imams—Ismaili, the son of Jaffir Seeduck.

His own personal history has been somewhat adventurous and romantic. His grandfather, Abool Hassan, as already mentioned, was governor, under the Zend drinces, of the important city of Kerman (*Exhibit No.* 93). On quitting that office Abool Hassan went to reside in the district of Mehelati, where the family appear to have long had considerable possessions and whence Aga Khan derives his territorial title. Mehelati Is between Hamadan (the old Ecbatana of the Medes) and Koom, the latter a city about midway between ispahan and Teheran, and important as the burial place of more than one of the Shahs of the Saffevi dynasty, (the "Sofis" of Shakespeare); of Fatima the daughter of Imam Resa, the great saint of Persia; and more recently of Futteh Ali Sha—the second in succession of the Kajar, or now ruling, dynasty who after a long reign extending from A.D. 1798 to A. D. 1834, lies buried here in one of the most superb mausoleum's that have ever been raised even to a Moslem prince.

The father of Aga Khan, Shah Khalillula, having for a time taken up his abode at the city of Yezd, the principal seat of the Parsis (the remnant of the Magians or Zorosastrians of ancient Persia) was slain there, with several of his household, in the year of Christ 1817 in the course of one of those tumultuary brawls which are not uncommon among the lawless mobs of the ill-policed Persian cities. "The news of this event," says Mr. Watson in his recent History of Persia (*London* 1866 *vol. i. 8vo p.* 192—*see also the confirmatory extract from, the native Persian historian exhibit No.* 93) "was received with the greatest concern by the Shah who dreaded lest he should be held responsible by the dangerous sect of the Ismailis for the death of their sacred chief." Futteh-Ali-Shah accordingly caused severe punishment to be inflicted on all the chief assailants in this murderous fray, and he conferred on the young Aga Khan

* The Assassins of Massiat and other rock-forts in Syria were suppressed by the Mamluk Sultans of Egypt about A.D. 1280.

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(the successor of his father in the Imamate) large possessions in addition to those which had descended on him through his ancestors, the government of the entire district of Koom and Mehelati, and the hand of one of his daughters in marriage.

From this period (say 1818) till the year 1838 nothing more is recorded of Aga Khan. That (1838) was the year in which Mahomed Ali-Shah, the 3rd in succession of the Khojah dynasty (he reigned from 1834 to 1848) retreated from the disastrous seige of Horat so memorably defended by Eldred Pottinger.

In that year Aga Khan raised the standard of revolt and seized the government of Kerman, where his grandfather had once presided, and where he himself had numerous adherents.

Mr. Watson (*History of Persia, p.* 331) states somewhat vaguely, as the reason for this rising, that the Aga "thought the time had now come when he might assert with advantage the religious character of which he was inheritor." The native Persian historian (*Exhibit No.* 93) assigns what is, perhaps, a more probable reason. Hadji Mirza Ahasi, who had been the tutor of Mahommed Ali Shah, was during the whole reign of his royal pupil (from 1834 to 1848) the Prime Minister of Persia. A Persian of very low origin, formerly in the service of Aga Khan, had become the chief favorite and minion of the all-powerful minister. This person, through his patron, had the impudence to demand in marriage for his son one of the daughters of Aga Khan—a granddaughter of the late Shah-in-Shah! This, says the Persian historian, "was felt by Aga Khan to be a great insult," and the request, though strongly pressed by the Prime Minister, was indignantly refused. Having thus made the most powerful man in Persia his deadly enemy, Aga Khan probably felt that his best chance of safety was to assert himself in arms—a course not uncommon with the great feudatories of disorganised Persia. Making Kerman his head-quarters he appears to have kept up the fight with various fortunes through the years 1838, 39 and part of 1840. In the latter year, overpowered by numbers, he was forced to take to flight, and with difficulty made his escape, attended by a few horsemen, through the deserts of Beloochistan, to Scinde, where he appears to have been hospitably received by the Talpoor Ameers. In Scinde he would of course find no money difficulties to contend with. The Khojahs of that province (numbering nearly 3,000 houses or families) have always been among his most zealous adherents, and from them and his other Khojah devotees in various parts of India and the East, there can be no doubt he received ample supplies. That extraordinary levy the "Bukkus" which the witness No. XXIV. (the Aga's Kamaria or collector general for all Scinde) describes as a payment by Khojahs to their Spiritual Head "*of a tenth of their whole possessions*"—was probably last resorted to at this period of emergency and distress. "No order for such a levy," said this witness, "has been made *for the last twenty-seven years*," an answer implying that it *had* been made *then*, which would be about the years 1839-1840.

Supplied with such resources Aga Khan was able during his residence in Scinde, to raise and maintain a body of light horse, who, during the latter stages of the Affghan war (in 1841 and 1842) were of some service both to General Nott in Candahar and also to General England in his advance from Scinde to join Nott. For these services and for others which he was enabled to render to Sir Charles Napier in his conquest of Scinde in 1843-44 Aga Khan received, and it seems still enjoys, a pension from the British Government of India. (*See for the above Major Rawlinson's letter to Mr. Maddock of 6th November* 1842; *Parliamentary Papers relating to military operations on Affghanistan* 1843 p. 217 *and elsewhere; Sir William Napiers "History of General Sir Charles Napier's Administration of Scinde." London* 1851.)

In 1845 Aga Khan came to Bombay, where, as appears from the evidence of witness No. XIV. and No. XVIII. he was received by the cordial homage of the whole Khojah population of this city and its neighbourhood. With the exception of a certain period of absence at Calcutta in the years 1846, 47 and 48 (occasioned it is said by the remonstrances of Mohamed Ali Shah, whose government was uneasy at the presence of the Ismaili chief in a port of such ready access to Persia as Bombay)—with this exception Aga Khan has ever since made Bombay his principal place of residence,—his "Durkhana" or head quarters. His habit during this period has been occasionally to preside at the *Jumat Khana* or *council-hall* of the Bombay Khojahs, on the more sacred anniversaries of the Mahomedan calendar. At the Moharrum he attends there with some state to hear the solemn recitation by Shia Moolas of the legend of the Great Martyrdom. On that occasion, at the Ramazan, at the new moons, and on other stated days, he leads the Nimmaz or daily prayer in the Jumat Khana and also presides over the distribution of water mixed with the holy dust of Kerbela. Every week on Saturday (when in Bombay) he holds a durbar (levee) in the Jumat Khana at about 7 or 8 o'clock in the evening, when a the members of the Khojah community who please may attend and have the honour of kissing his hand. The above, taken from the evidence of his very intelligent private secretary Kurreem Khan (*witness* No. *XIV.*) appear to be the principal public and religious duties performed by the Aga in Bombay.

His yearly income, derived from his votaries in many various, and some very remote parts, of Asia, is said, by the same witness, to average a net sum equal to about £10,000 sterling of our money (*Witness No. XIV*). Of this considerable income the greater portion is spent by the Aga in horse-racing—a pursuit of which in Bombay he is, and for some time has been, one of the principal patrons.

(11.) The next question is *Who and what are the Khojahs, and what have been their relations with the hereditary Imams of the Ismailis the ancestors of Aga Khan.*

From the evidence adduced in this case, the more probable conclusion, I think, is that the Khojahs were originally Hindoos of the trading class, inhabiting the villages and towns of Upper Scinde. Their language is Scindi or Cutchee—a cognate dialect—and such ancient religious works as they possess are written in the Scindi language and character. Scinde, an early Mahometan

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conquest,* has long had a large Mahometan population —but a considerable portion both of the retail and wholesale business of the country has always remained in the hands of the Hindoos. The position and circumstances of these remote and isolated Hindoo traders were manifestly such as to favour their conversion to some form or other of Mahometanism.

That they were so converted by *Pir Surdordin* about 400 years ago is admitted by both the contending parties in the Khojah community. It is also agreed that the tomb of this Pir or (Saint) is at Ootch, a town of about 1,800 houses in the native state of Bhawulpore, on the left bank of the Punjnund,—the channel through which the collective waters of the five rivers of the Punjab flow into the Indus—and about 40 miles above its point of junction with the latter river. Here the agreement ends; according to the traditions of the great body of the Khojah community Pir Surdordin came from Khorasan and was an Ismaili Dai or missionary sent by Shah Islam, one of the ancestors of Aga Khan, and the form of Mahometanism which he taught his converts was the Shia Imamee Ismaeli faith. According to the relators and plaintiffs, and those of the Khojah community of Bombay who side with them, Pir Surdordin was a Suni, whose place of residence was at Mooltan, and who converted the first Khojahs to Suni Mahometanism.

The term "Khojah" means both "the honourable or worshipful person" and "the disciple." Its full meaning as applied to the community converted by Pir Surdordin, may, perhaps, fairly be taken to amount to this, "*the honourable or worshipful converts.*" It is in this sense that it is to be found used in Von Hammer's History of the Assassins (p. 75), where he relates how one Khojah Mahomed ieristani, having been sent from Alamut on some embassy the Court of one of the Seljukian Sultans of Irak at Rhai is there massacred "on leaving the presence" by the ocious Suni populace of that orthodox city, who rose *en asse* against the Ismaeli convert or disciple.

From Scinde the Khojah conversion would appear to have spread into Cutch, thence into Kattiawar, and through Guzerat to Bombay. In the present time Khojah communities are to be found in almost all the large trading communities of Western India and on the seaboard of the Indian Ocean. The Khojahs are all, as a rule, engaged either in retail trade or commerce, and frequently prosecute both with considerable success.

In Scinde, as appears from the evidence in this case they number 2,800 houses or families; in Kattiawar about 5,000 families. In Cutch and Guzerat the numbers are not stated, but must be considerable; Bhooj, the capital of Cutch, having long been one of their principal seats. In Zanzibar (on the African Coast) there are 450 Khojah families—in Muscat 400—and so on. In Bombay and its immediate neighbourhood, they may probably number about 1,400 families, of whom about 400 side with the relators and plaintiffs, the rest with Aga Khan.

Beyond the limits of Bombay and its immediate neighbourhood no difference of religious opinion appears to prevail among the Khojahs. All or the overwhelming majority of the Khojah community in all parts of India and the East, except Bombay, are the staunch adherents of Aga Khan: to take an illustration (which seems to be quite a fair one) from the evidence of witness No. XXIII. it appears that 445 out of the 450 families who compose the Khojah community of Zanzibar have recently signed a paper of adhesion to the Aga and to the views he is understood to represent.

Wherever a Khojah community is to be found, however small, its organization is the same: it has a Jumat, a Jumat-Khana, a Mukhi, and a Kamaria.

The "Jumat" is the 'congregation of the people,' the assembly in council of all the adult male members of the Khojah community of the place.

The "Jumat Khana" is the council-hall, or guild-hall, of the community.

The "Mukhi" is the treasurer or steward, and the 'Kamaria," the accountant.

It may as well be mentioned here (as it is the clear result of the evidence and effectually disposes of the 2nd, 3rd, and a portion of the 6th clause of the prayer of this information and bill) that these two functionaries, the Mukhi and Kamaria, are not, according to the usage of the Khojah community, elected for any fixed and ascertained person, but appear to hold their office (if they wish so to do) as long as they give satisfaction. Numerous instances were deposed to in which they continued to hold office for several consecutive years—sometimes for life—and one instance, at least, was mentioned in which the father had been succeeded in office by his son (see witnesses No. XVIII., No XIX., No. XXIV., and No. XXV). Besides these local Mukhis and Kamarias proof was given that in Scinde and Kattiawar (it may also be the case elsewhere) provincial Kamarias are appointed by and hold office under the Imam, for the time being, of the Ismailis. The duty of these functionaries is to collect and forward for transmission to the Imam, wherever he may chance to reside, the contributions raised on his account by the Khojah community.

It is conclusively shown, partly by direct evidence of account books going back considerably beyond the commencement of the present century (those of Scinde to A.D. 1772, those of Kattiawar to A.D. 1782)—partly by evidence

* The first Arabian conquest was as early as A.D. 715, but in 750 the Mahometan conquerors were driven out, and Scinde appears not again to have come under Mahometan dominion till the 12th century of our era (Elphinstone's History of India p. 258-262 and Appendix, Tit. "Scinde" p. 632.

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of tradition in the caste or sect as reliable as any other evidence of tradition adduced in this case (quite as reliable, for instance as that which represents Pir Surdordin to have been the original converter of the Khojahs) that, for a time "beyond which the memory of man runneth not to the contrary"—from the origin—from the very outset of their separate existence as a distinctive community,—the Khojahs have been in the habit of transmitting, as to their "Sirkar Sahib" (lord and master) voluntary offerings (Zacat) out of religious feeling (Dhurm) to the Imam for the time being of the Ismailis, whom they revered as their Moorshed or spiritual head.

The mass of evidence adduced on this point is too strong to be resisted. Even the witnesses called for the relators and plaintiffs were compelled to admit, that, according to the uniform reputation and tradition in the Khojah caste, their fathers "from the beginning" had been in the habit of making voluntary contributions to the fathers of Aga Khan: while the positive evidence adduced on the other side makes it impossible to entertain a reasonable doubt that the Khojahs have throughout been in the habit of sending periodical collections to the Imams of the Ismaelis in Persia, in the earlier and ruder times in the form of coin or treasure sent by special messengers (called "Raia") in leathern bags called ("Jowlies") afterwards, as commercial facilities increased, by means of hoondies (bills of exchange) principally drawn upon and cashed at Muscat.

(*See especially evidence of witnesses No. XXIII., No. XX., No. XXIV. and No. XXV. and the very numerous documents containing translations of entries from the account-books of the various Jumats of Bembay, Scinde, Kattiawar, &c., which were put in these respective witnesses and filed as exhibits on behalf of the defendants.*)

Not only were the Khojahs, from the first, in the habit of transmitting contributions to the Imams of the Ismaelis, but it was also, from the origin, a frequent practice with them, to make pilgrimages into Persia for the sake of beholding and doing homage to these their spiritual chiefs. This practice also (called pilgrimage to "Durkhana," *i. e.* to the principal residence for the time being of the Imam) is shown not only by the admissions of the witnesses for the relators and plaintiffs but by the positive testimony of the witnesses for the defendants, to have been according to uniform tradition in the caste, a practice observed by the Khojahs from the earliest times of their existence as a separate community: "From all time our fathers used to go on pilgrimage to Durkhana."

One witness (No. XX.) gave a narrative of a pilgrimage of this kind that he made in 1836-37 to Kerman where Aga Khan at the time happened to be residing. The witness, his father and mother, a brother, and two sisters, with a party of about 100 other Khojah pilgrims, sailed from Bombay to Bunder Abbas, a portion the Persian Coast, near the outlet of the Persian Gulf. This body of pilgrims had offerings with them, in money and rich stuffs, to the collective value of about £2,000 sterling of our money. They stayed some time at Bunder Abbas, waiting for other Khojahs to collect there from other quarters, before starting on their tedious and somewhat perilous journey of 21 days across the mountain ranges of Southern Persia from Bunder Abbas to Kerman. At length, about 500 Khojahs having collected from all parts at Bunder Abbas the caravan was formed and they made their way to Kerman. There they were lodged, at the expense of the Imam, in a large rude building, built round three sides of a great open court. They stayed in Kerman about a month or six weeks, during which period, having first made their offerings, they were admitted ten or twelve times to the presence of the Imam. "The Aga," says the witness, "sat on his musnud; we beheld his face, kissed his hand and retired." It was for that they had come and with that they were well satisfied.

The pilgrimage and the presents cost the witness's father about £500 of our money,—a sum which, as the man was only a dealer in grain and dried fruits in a moderate way of business, seems to the modern English mind a somewhat considerable outlay to have made for such a purpose. But the West can never understand the East, especially the modern and mercantile West. To an Englishman of Chaucer's day such an expenditure for such an object might have appeared more intelligible, provided, of course, that the pilgrimage was made to a shrine or saint of Christendom not of Paynimrie or Heathenesse.

It is not necessary to go into the detail of the different fees—fees on birth, on death, on marriage, at the new moons, &c., of which (as the evidence of the witnesses and of the exhibits last above referred to shows) the customary or voluntary contributions of the Khojahs to their Imam, were made up. The principal was the "Dusoon," a percentage on income. This payment has throughout been and still is paid by all Kojahs except those of Bombay. In Bombay it has for some time been resisted, and is now paid here not as a rule, but as an exception.

It is more important to observe that all these payments are made under headings, such as "Sirkar-Sahib," "Pir Salamut," &c., which, though varied in form, all indicate one and the same appropriation—an appropriation, namely, to the Imam of the Ismailis, as the Moorshed or spiritual head of the Khojahs.

All the offerings or contributions of the Khojah community appear, from the evidence, to have this primary destination. It is out of the fund thus raised, after consultation with the agent (Warras) of the Imam, that the neces-

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sary local public expenses of the various communities are defrayed.

The witness No. XXVIII., a Bombay Kojah and one of those who had never paid the Dussoon, though he was in the habit of paying the other customary fees, said that he paid them "as a matter of Dhurm or religious feeling." I pay them," he said, "for the Aga; if I knew they went to any one else except our Moorshed, (Spiritual Head) I would not pay anything at all."

Allarukia Soomar (No. XVIII.), the Mukhi of the Khojah Jumat of Bombay, a very respectable and reliable witness, said—"It has been ordained from the beginning that whatever funds are collected should go to the Moorshed—the Moorshed and the Jumat (the spiritual head and the assembly of the Khojahs,) are identical. If the Mukhi and Kamaria did not hand over the monies to the Aga, the Khojah community would pay no more fees."

Witness No. XX. said—"All the expenses of the estate 'account,' of 'the estate expenditure account,' and of the 'Jumat Khana account,' are defrayed out of fees paid on 'Sirkar-Sahib's' (the Imam's) account." And the truth of this statement is completely borne out by the voluminous translated entries from the books which have been filed in this suit among the exhibits for the defendants.

To the same effect is the evidence of witnesses No XXIV. and No. XXV. This latter witness, the Kamaria-general for the province of Kattiawar says—"All the Jumat Khanas in Kattiawar are built and purchased by the consent of the Warras (agents) of the Aga out of Sirkar-Sahib's money, and are entered in an account called the 'Jumat Khana account.' All the Khojahs in Kattiawar know that their contributions go (primarily) to the Aga, otherwise they would not pay a pie."

It is not necessary to cite further from the evidence on this point: a full consideration of the whole mass of it (and very voluminous it is) has led me clearly to the two following conclusions:—

1. That, except the comparatively small numbers of Bombay Khojahs who form the party of the relators and plaintiffs the Khojah community would make no contributions at all for public or caste purposes except in the name and primarily on account of their Sirkar-Sahib, the Imam of the Ismaelis.

2. That the great bulk of the so-called public property of the Khojah community, both in Bombay and elsewhere, has been acquired by monies paid out of this Sirkar-Sahib's fund with the approval and consent of the properly constituted local agents of Aga Khan and his predecessors.

As a rule the Khojahs have no musjids or mosques —in fact the only Khojah musjid still very recently in existence, was that erected in A.D. 1823 in the Khojah burial-ground of Bombay. The Nimmaz or daily prayers among the Khojahs are repeated, or as the approved phrase seems to be, performed in their Jumat Khanas: and in order to complete the proof of the close and peculiar connexion subsisting between the Khojahs and their Moorshed, the Imam of the Ismailis, it may here be mentioned that the pedigree from Ali through Ismail of the Imam for the time being, is chanted three times a day as part of the service of the daily prayer or Nimmaz in a form of words called the "Dowa" throughout all the Jumat Khanas of the Khojah community, including the Jumat Khana of Bombay.

Such then in its origin and its past and present relations with the hereditary Imams of the Ismailis appears to me upon the evidence to be and to have been the Khojah community.

(12). The next point to consider is—*what have been the relations of Aga Khan himself with the particular Jumat, or community, of the Khojahs of Bombay?*

His first recorded intercourse with them was one of controversy and strife. In 1829 the same party that are now represented by the relators and plaintiffs, headed by Hubbib Ibrahim, the father of Ahmed Hubibbhoy (the most active and influential among the present relators and plaintiffs) resisted the customary payment of the Dussoon or percentage on income. Aga Khan in order to overcome this opposition sent to Bombay as his special agent one Mirza Abdool Cassim, accompanied by a very energetic lady, the Aga's maternal grandmother, Marie-Bibi, who herself appears to have harangued the Bombay Khojahs in Jumat Khana assembled, and with very considerable effect, in support of the claims of their Moorshed. (*Witness No. XVII.*) It was in the course of these proceedings that the Bill of A.D. 1829 was filed for the purpose of enforcing these payments by a decree of the late Supreme Court. Aga Khan (in the 4th paragraph of his answer) has denied that this suit was filed with his authority; but a power of attorney sealed with the seal of the Aga (*and put in and filed as Exhibit D.*) clearly recites "that as in Bombay some reprobate persons had laid the foundations of disobedience, it is necessary that he (Mirza Abdool) do bring an action in the English Court." Authority having been thus formally given, the suit was filed, but it was not proceeded with; the bill (*as appears by Exhibit I.*) having been dismissed for want of prosecution on the 22nd July 1830.

I do not think much importance can fairly be attached to the circumstance of filing this bill. Aga Khan, a Persian nobleman, then resident in Persia, was in all probability very imperfectly informed as to the inferences that

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would be drawn in an English Court from the attempt to enforce by legal process such payments as these. As he did not prosecute the suit, the fair and reasonable inference is that, on being more correctly informed, he found he had adopted a mistaken course, and consequently abandoned the proceedings. What is certain is that after abandoning the suit he directed the recusants to be summoned before the Jumat of Bombay, and, on their continued refusal to pay the fees demanded of them, to be turned out of caste. Accordingly in A.D. 1830 Hubbib Ibrahim and his partizan called from their then numbers the Barbhaie, or twelve brethren, were outcasted by the whole Khojah Jumat of Bombay in Jumat Khana assembled. (*See the evidence of witness No. XVIII*). In A.D. 1835, they, on their own petition and by the direction of the Aga, were readmitted on condition of paying (which they did) the arrears of contribution due from them, and engaging in future to pay all the customary fees that should thenceforth be demanded of them on account of the Sirkar-Sahib.

From this time till the Aga's arrival in Bombay in 1864 there is no record of any further disturbance in the community.

During the absence of the Aga in Calcutta in 1846, 47, and 48 a litigation was carried on and concluded, which again divided the Khojahs of Bombay into two hostile parties; it was the well known case as to the rights of female inheritance among the Khojahs (called Sarjun-Meer-Ali's case) in which Sir Erskine Perry, in 1847, pronounced a learned judgment (founded on the evidence of caste usage and custom) against the rights of Khojah females to inherit according to the rules of Mahometan law—(*Perry's Oriental Cases, p.* 110.)

In this litigation the Aga, then represented in Bombay by his brother Mahomed Banker Khan, had endeavoured to uphold the rule of inheritance as laid down in the Koran. Hubbib Ibrahim and the party of the Barbhaie took an active part on the other side.

This was the commencement of fresh feuds, leading, in 1848, to a second excommunication of Hubbib Ibrahim and his supporters, followed by a general secession of the Barbhaie party from the body of the Khojah community—the seceders establishing themselves in a new Jumat Khana in a different part of the native town.

In 1850 a deplorable event arising out of these feuds occurred in the Jumat Khana at Mahim.* Four Khojahs of the Barbhaie party were murdered there by several Khojahs of the opposite faction, nineteen of whom were tried for the offence before the late Supreme Court in the December sessions of 1850, and four capitally sentenced and hanged. (*Witness No. XX.*)

* A village in the immediate neighbourhood of Bombay

From the reluctant admissions of witness No XX., himself one of those who were arraigned, but acquitted, on that occasion, it sufficiently appears that the bodies of these four murderers, after having been given up to the Khojah community of Bombay, were treated with undue funeral honours with the connivance, if not by the direction, of Aga Khan—a circumstance which shows the demoralising effects of religious zeal, and reflects the deepest discredit on the first defendant.

In A.D. 1850 the information and bill was filed, of which the present information and bill purports to be the continuation, and in A.D. 1851 Sir Erskine Perry pronounced the Declaration of Rights, to which reference has already been made.

This had the effect of producing a state of peace in the community, which lasted unbroken for upwards of ten years. The outcasted were re-admitted to caste; the new Jumat Khana of the seceders was abandoned, and all went smoothly until, on the 20th October 1861, Aga Khan thought fit to publish the paper, a translation of which is printed in Schedule B to his answer, and is also filed as Exhibit No. 19.

In this paper Aga Khan expresses his desire to bring the Khojahs to conform to the practices "of the Imamujah creed of his holy ancestors," (in other words of the creed of the Shia-Imamee Ismailis) in respect of "marriages, ablutions, and funeral ceremonies." He states that having seen it in print that the Khojahs are Sunis, and that a certain person (meaning himself) is "peremptorily inviting them to embrace the Imamujah creed," he has prepared the paper in order that (as under the English government the exercise of all religions is free) the Khojahs who believe in the Shia-Imamee-Ismaili faith, may now act openly according to the practices of that religion, "which their ancestors held secretly," especially as regards the celebration of marriages, funerals, &c. The paper ends thus: "Now he who may be willing to obey my orders shall write his name in this book" (the paper is written at the commencement of a book with blank leaves for signatures) "that may know him."

The proximate cause of preparing and publishing this paper, is stated, in the paper itself, to have been the appearance in print of statements that the Khojahs were Sunis and that Aga Khan was attempting by coercion to make Shias of them. This alleged reason is likely enough in itself and is borne out by the evidence of witness No. XVIII., who says "In consequence of certain newspaper articles stating that the Khojahs are Sunis, the Aga sent a writing prepared: he told me" (the witness was Mukhi of the Bombay Jumat) "he should like to see who of the Khojahs were Sunis and who were Shias; those who were Shias should come and sign that writing."

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Accordingly the paper lay for signature at the house of one of the Aga's sons in the native town at Bhendy Bazaar and was signed by some 1,700 male, but not all adult, Khojahs of Bombay, Salsette, and Mahim.

Copies were circulated among the Khojah communities of other parts of India and the East—in Scinde, Kattiawar, Cutch, Zanzibar and other places, in all of which, as might be expected from the devoted adherence of all Khojahs except a small minority in Bombay, to their Sirkar-Sahib, it, as a rule, received an almost unanimous adhesion. In fact the only exception disclosed by the evidence was that spoken to in cross-examination by witness No. XXV.—the refusal to sign the writing by about 20 Khojah families at Mowa, a large cotton-exporting port near Bhownugger in Kattiawar. The alleged reason for their refusal to sign was, that by doing so they might offend those members of the Khojah community of Bombay who adhered to the relators and plaintiffs and with whom they had a large and lucrative business connection. They said "We *are* Shias already; why should we sign this writing? and they refused to do so, or to give up their long-established practice of marrying before the Suni Kazee. (*Witness No. XXV.*)

It is not unimportant clearly to bear in mind the precise nature of this writing. It is *not*, as it has been occasionally but incorrectly termed, *a profession of Shia faith.* It is a mere declaration or pledge on the part of those Khojahs who, in matters of religious opinion, are already Shias or rather Shia Imamee Ismailis, that they will, from the time of signing it, perform their funeral and marriage ceremonies—not according to the Suni form, as it is admitted they had theretofore done, but according to the Shia form. It is an engagement that those who have all along been Shias or Shia-Imamee Ismaelis in religious opinion, shall thenceforth be so also in all the departments of religious practice.

Such as it was, however, it was regarded as a fresh declaration of war by the party of the relators and plaintiffs. It led at once to a refusal by that party any longer to pay the customary fees and offerings to the Sirkar-Sahibi. It led further to the filing of the present Information and Bill, (filed originally in June 1862 as amended in September 1862), the great object of which, as already intimated, is to obtain from this court an authoritative declaration, that the Khojah community in its origin was, throughout has been, and still is, Suni, and that no Shia (*a fortiori* that no Shia Imamee Ismaili) is entitled to any share, interest or voice in the management of the trust, or public, property belonging to the Khojah community of Bombay.

These proceedings of the relators and plaintiffs and their party led to certain retaliatory proceedings on the other side which, as they were subsequent in date to the filing of this suit cannot, as already intimated at the hearing, be regarded as affecting the legal status of the relators and plaintiffs. As, however, they have been deposed to by several witnesses and largely commented on by counsel on both sides; as they are requisite to complete the narrative of the relative position of the contending parties; as moreover they furnish the best illustration of the mode in which the process of outcasting is actually carried on in the Khojah community under the superintendence of Aga Khan, it will be desirable not to pass them over without mention.

On the 16th of August A.D. 1862, a meeting of the whole Khojah Jumat of Bombay was solemnly convened in the Jumat Khana. This meeting, the relators and plaintiffs and their partizans, though duly summoned thereto, did not attend; neither was Aga Khan there, nor any specially constituted agent of his, though there can be no manner of doubt that all that was done at that meeting, and all that followed, was done in concert with him and by his direction. At this meeting a form of notice was unanimously agreed to, dated August 23 (*Set out in para.* 22 *of the answer of the first defendant)* by which it was intimated to the party of the relators and plaintiffs, that if they consented to abide by all present and future rules framed by the whole Jumat for the guidance and benefit of the community, and to pay all fees and contributions due from them up to that day, then the Jumat would receive them with joy as brethren—if not, then within twenty-one days from the presentation of the notice, they would be turned out of caste.

After the expiration of the twenty-one days, the required conditions not having been complied with, the Jumat again solemnly assembled in the Jumat Khana. Again none of the party of the relators and plaintiffs, though again duly summoned, were present; nor was Aga Khan there, nor any special agent of his. At this second meeting, by the unanimous vote of all the Khojahs in Jumat assembled the relators and plaintiffs and their adherents were solemnly turned out of caste, and have remained outcasted ever since.

In February 1864, a further and final step was taken by turning the officiating Suni Moola out of the old mosque in the Khojah burial-ground, since which worship in the old mosque has been carried on by Shia Moolas and according to Shia forms.

Since these transactions the party of the relators and plaintiffs have been in the occupation of a separate Jumat Khana and have opened for themselves a separate musjid.

(13.) *We now pass to the consideration of the question*

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as a matter of direct historical fact upon the evidence as to who Pir Surdordin was, and what was the form of Mahometanism to which he converted the Khojahs.

According to the tradition uniformly prevailing among the great bulk of the Khojah community, among all Khojahs in short, except that numerically small proportion of them who are represented by the Relators and Plaintiffs—Pir Surdordin came from Khorassan as a Dai or missionary of one of the ancestors of Aga Khan (Shah Islam Shah) and converted the first Khojahs to the Shia Imamee Ismaili form of Mahometanism.

On the other hand the Relators and Plaintiffs maintain that Pir Surdordin was a Suni Mussulman, a native of and resident in Mooltan, and that he converted the Khojahs to the Suni form of Mahometanism.

Two witnesses were called—No. IX. by the Relators and Plaintiffs, and No. XXII. by the defendants, both of whom were Syuds, and both, as they deposed, lineal descendants of Pir Surdordin, who each gave exactly opposite accounts of the religious opinions of that converter of the Khojahs. Witness No. IX. whose ancestors had, as he said, lived in Surat for the last 100 years, declared that he himself and all his progenitors including Pir Surdordin were, and always had been, Sunis. Witness No. XXII., whose family had, according to his statement, been for 200 years in Surat, declared with equal confidence and with equal apparent credibility that he, and they, and all his progenitors, including Pir Surdordin, were, and always had been, Shias of the Imamee-Ismaili persuasion.

The testimony of one of these witnesses may be set off against that of the other, subject only to the remark that the testimony of the Shia witness No. XXII. is in accordance with, while that of witness No. IX. opposes, the tradition of the greatly preponderating majority of the Khoja community.

But there are *three* considerations which lead me to the conclusion that the truth is with the majority.

The *first* consideration is this: If Pir Surdordin had been, as the relators and plaintiffs allege, *a Suni teacher who converted the first Khojahs to Suni Mahometanism*, he must have stood forth before the Khojah community as the great object of Khojah veneration, with nothing between him and the Apostle of God. In such case the homage, the devotion, the pilgrimages which have been proved to have been made from the beginning by the Khojahs to the Imams of the Ismailis, would naturally have been paid to the holy tomb of the great founder and saint who had converted the Khojahs to the religion of Islam.

Now nothing of this kind is or ever has been the case. Pir Surdordin lies buried in North-western India, at Ootch in Bhawulpore, but no pilgrimages are made, no extraordinary devotion is shown, to his tomb. Not a single Khojah witness has been produced on either side who has ever made a visit to the tomb of Pir Surdordin. The only witness who gave any information about it at all was No. XXIV., a witness for the defendants. He, indeed, on cross-examination said that he had known a few Khojahs of Scinde who had been to Ootch and told him that the Pir had a fine durga or tomb there kept up by Syuds, descendants of Pir Surdordin, who were all Shias: he himself, the witness added, had occasionally paid some trifling dues for keeping the tomb in repair; *but it was not common for Khojahs to go and visit that tomb—he did not know why.*

Now this in my judgment, is a state of things quite incompatible with the theory that Pir Surdordin, of his own mere motion as an *independent* founder and originator, had converted the ancestors of the Khojahs to the *Suni* faith of Islam. On the other hand, it is exactly what might reasonably be expected, if the tradition of the great body of the Khojah community be well founded, viz., that Pir Surdordin was a mere Dai or Missionary of a living, though distant, Imam of the Ismailis, to whom, as to a *living* concrete object of respect and worship, he from the first directed the spiritual allegiance and veneration of the new converts.

The *second* consideration is this: as already shown, it is proved as clearly as any circumstance of the kind is capable of proof among a people where oral tradition supplies the place of written records, that the Khojah community from the beginning made pilgrimages and paid contributions to the hereditary Imams of the Ismailis. Now, how is this clearly established fact to be accounted for? On the supposition that Pir Surdordin was a Dai or Missionary of the then Imam of the Ismailis, the explanation is clear and simple; but if this be denied, what other explanation is to be given of the facts? Was there a subsequent conversion and a second founder? This is not even pretended, and, if there had been some tradition of it, it would certainly have been preserved, whereas no such tradition exists or is pretended to exist. When one allegation, supported by an exceedingly strong and uniform current of tradition, clearly explains a proved state of facts, which no other suggested hypothesis will account for, it is surely not enough for those who dispute that allegation, simply to set up a counter-allegation, supported by a far weaker current of tradition, which instead of explaining the proved facts, makes them unaccountable. If Pir Surdordin was a Suni and converted the first Khojahs to Sunnism, how are we to account for the well-established fact that the Khojahs, from the beginning, have been bound by ties of close spiritual allegiance, evidenced by outward acts of homage and devotion, to the hereditary Imams of the Ismailis?

The *third* consideration arises out of the character of the ancient religious books of the Khojahs, and especially of the *Dussatir*, the chief of them.

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Now, by a tradition long universal in the Khojah community, and never, I believe, called in question by any Khojah, till the appearance in the witness-box during the progress of this suit of two or three of the more zealous witnesses for the relators and plaintiffs—(*See the evidence of witness No. I. and witness No. XI.*), the authorship of the *Dussautar* is ascribed to Pir Surdordin.

If it be not his, then the same difficulty arises as was suggested under the last head of observation. If the original converter of the Khojahs were not the composer, or (which for this purpose amounts to the same thing) the introducer to the sect as a leading book of religious teaching, of the *Dussautar*, how comes it that that book has been from the beginning the accepted scripture, so to speak, of the Khojah sect?

That it has been so, and with the exception of the party of the relators and plaintiffs, still is so—is abundantly clear on the evidence. The present information and bill (in its first paragraph) adopting as true the statement to that effect continued in the Information and Bill of 1850, alleges "that the *Dussautar* is invariably read over Khojahs who are at the point of death." The evidence taken in this case proves incontestibly that in all the Jumat Khanas of the Khojahs throughout India and the East, *including that of Bombay*, the *Dussautar* is publicly and periodically read as a matter of stated religious observance.

If Pir Surdordin, according to the vastly preponderating traditions in the community, composed this work, or if he introduced it as a work of principal religious authority to the first Khojah converts, the explanations of its continuous and all but universal use in and by the Khojah community is easy and plain. On any other supposition it remains inexplicable, unless indeed the relators and plaintiffs had come prepared with proof, not a shadow of which have they even attempted to give us to when, how, and by whose instrumentality, if not that of Pir Surdordin, this book became adopted by the Khojahs as the most sacred volume of their religious literature.

It is impossible to evade the force of these considerations; it is impossible not to see that the evidence on this point leads, as the only reasonable inference, to the conclusion that the *Dussautar*, if not composed by Pir Surdordin, which is the more probable supposition, was at all events introduced by him as a leading religious tract or text-book for the use of the first converts among the Khojahs.

Regarding, then, Pir Surdordin as the author, compiler, or adopter of the *Dussautar*, what is the inference that arises from the nature of that work as to the nature of his religious opinions?

What is the *Dussautar*? It is a treatise in 10 chapters containing (as indeed its name imports) the account of ten avatars or incarnations, each dealt with *in a separate chapter. The first 9 of these chapters treat of the nine incarnations of the Hindoo god Vishnu; the 10th chapter treats of the incarnation of the "Most Holy Ali.*

The negative conclusion is clear at once. No Suni could have composed, compiled, or adopted such a work as this: the idolatry of the first 9 chapters—the semi-deification of Ali implied in the 10th chapter, alike render this utterly impossible.

On the the other hand it is precisely such a book as a Dai or Missionary of the Ismailis would compose or adopt if he wished to convert a body of not very learned Hindoos to the Imamee-Ismaili faith. It precisely carries out what it has already been shown were the standing instructions to the Dais of the Ismailis, viz.—to procure conversions *by assuming as in great part true, the religious stand-point of the intended convertite.* This is exactly what this book does: it assumes the nine incarnation of Vishnu to be true as far as they go, but not the whole truth, and then supplements the imperfect Vishnuvite system by superadding the cardinal doctrine of the Ismailis the incarnation and coming manifestation (or Avatar) of the "Most Holy Ali." When the book is read in the Jumat Khanas of the Khojahs, it is this 10th chapter (as appears from the evidence) which is alone now-a-days seriously attended to. When that chapter is commenced, the congregation of the people rises and remains standing till it is concluded, making profound reverences whenever the reader pronounces the name of the 'Most Holy Ali' (*Mowla or Motizir Ali.*)

The above conside rations leave me in no doubt as to the only reasonable conclusion to be drawn from the evidence on the point immediately under discussion: that conclution is that the preponderating tradition of the Khojah community is substantially correct, that Pir Surdordin was a Dai or missionary of the hereditary Imams of the Ismailis (probably of Shah Islam Shah) and that he converted the first Khojahs to the Shia Imamee Ismaili form of Mahometaniam.*

(14) But then it is said, if this be so, how is it to be accounted for that, from the beginning, the Khojahs in their *funerals and in their marriages have followed the practices and the rites of the Suni Mahometans?*

The fact that they have done so is not seriously contested by the defendants, and has been most conclusively established by the evidence adduced on behalf of the relators and plaintiffs.

The answer given to the above question by the defen-

* Sir Erskine Perry, as appears by a note to his reported judgment in the case of Khojah inheritance, had, on further reflection arrived at the same conclusion. *See note to p.* 113 *of Perry's Oriental Cases.*

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dants is that the Khojahs have observed these practices from the beginning out of "*Takiah*"—concealment of their own religious views and adoption of alien religious ceremonies out of dread of persecution for religion's sake.

It has already been shown that "Takiah," in this sense, has been uniformly recommended by the teachings and illustrated by the practice of the Shia Imamee Ismailis.

The doctrine and practice of "Takiah" is unknown to the Sunis: as the orthodox and dominant body in Islam they never had occasion for it; but it is frequently practised, as already seen, by the Shias, and it is still more deeply ingrained into the habits of the Ismailis who, of all other sects, have been most obnoxious to the persecution of the fierce and orthodox Sunis.

What the fierceness of Suni bigotry amounts to is a matter difficult to convey adequately by any general terms—it will be better judged of by a single well attested illustration.

The great Emperor Akbar ruled over India from A.D. 1545 to A.D. 1605: as is well known he was an ardent religious reformer who attempted, if he did not complete, the establishment of an eclectic system that approached pretty nearly to pure Theism. (*See Elphinstone's History of India book IX. chapter 8, and Akbar Shah's Divine Monotheism &c. by E. Rehatsek.* (*Bombay Union Press.* 1866.)

He was also a great patron of literature, especially Hindoo literature, the principal works of which he caused to be translated from Sanscrit into Persian. Among those employed by the Emperor in these labours was the very learned Suni Moola—Abdul Kadur—whose task it was, very much against the grain, to translate for his Imperial patron considerable portions of the Ramayana—the great epic of "those accursed pagans and idolators," as the learned Suni called his Hindoo fellow-subjects.

Abdul Kadur has left behind him a species of diary called the "Muntakab-al-Tawarikh," which presents a lively picture of the court, and of the religious projects of Akbar. This diary is often referred to by Mountstuart Elphinstone in his admirable 'History of India under the Mahometans,' and has lately been in part rendered into English by Mr. Edward Rehatsek, who has now collected into a small volume (*Bombay Union Press*, 1866), a series of translations from it which had previously appeared in the columns of *Native Opinion*, a very able periodical conducted by native gentlemen who have received, and illustrate the advantages of an English education. From the diary so translated I take, with omissions, the following notice by Abdul Kadir of the assassination and of what followed the assassination of Moola Ahmad, a celebrated Moola among the Shias, who, by favouring the Emperor's views of religious reform, had drawn down upon himself the especial wrath of the Sunis. "In this year (A.D. 1587) Mirza Fullad Beg Birlas decoyed Moola Ahmad the heretic—who had publicly cursed the companions of the Prophet" (*i. e.* the three first Caliphs) out of the house and killed him, and the words '*Hurrah for the dirk of steel*" as well as the words '*The Swine of Hell*' embody the date.* Verily *when that hound was in his last agony, I beheld his countenance like that of a hog and others have likewise seen it in the same form.*" For this crime the assassin was executed, or as Abdul Kadir expresses it, "attained the rank of martyrdom" in the city of Lahore. He then proceeds thus: "The murdered man survived his murderer only three or four days. After he was buried Sheikh Fayzy and Sheikh Abulfadal appointed watchmen over his grave, but as the court went that year to Cashmere, the inhabitants of Lahore *disinterred one night his stinking carcase and burnt it.*" (*Page 79 of Mr. Renatsek's Translation.*) In the above passage breathes the full spirit of the Suni bigot—the Pharisee of Islam—narrow, and formal, and fierce. If such things could happen under the reign of the great and powerful Akbar, to a Suia who enjoyed his close personal friendship, it may easily be understood what would in all probability have been the lot of the earlier Khojahs, if they had openly professed the hated faith of the Ismailis, and had not resorted to the Suni Kazees for the celebration of their marriages and to the Suni mosques and Moolas for the performance of their funerals.

To do so, indeed, was a matter of convenience, almost of necessity, as well as of *Takiah*. Even now in wealthy and prosperous Bombay *Shia* Moolas, as it appears on the evidence, are not to be found without some difficulty: how were the Khojahs, dispersed in remote and rural districts, and who, as the evidence in this case shows, had never any Musjids of their own—how were they to get funeral ceremonies performed at all unless they employed the sole agency they could find at hand—that of the Suni Moolas officiating in the Suni mosques? As regards marriages the principle of convenience was still more strongly in favour of celebrating them before the Suni Kazees, who keep a regular and careful register, capable of supplying easy and authoritative proof of the fact of marriage—a fact which it is so often of great importance to have the means of establishing by legal proof. Add to this the class of motives which in England, even since the passing of what is called the Dissenter's Marriage Act (6 and 7 Will. IV. c. 85, which came into force on 1st March 1837 still induce so large a proportion of the dis-

* It is a favourite exercise of Persian ingenuity, in recording any event, to compose a motto in verse, which while expressing some sentiment appropriate to the event also records its date.

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senting body to marry according to the rites and ceremonies of the Church of England. From the last "*Annual Report of the Registrar General of Births, Deaths, and Marriages in England for the year* 1864" (*presented to Parliament in* 1866, it appears that out of the whole number of marriages celebrated in places of public worship in England, the proportion of marriages in Churches to those in Dissenting Chapels is 9 to 1. After making due allowance for the marriages which take place, without any religious ceremony, in the offices of the Superintendent Registrar, this proportion is so greatly in excess of that borne by the Church of England, to the Dissenting population, that it shows, as the Registrar General observes, that large numbers of Dissenters willingly accept the church ritual in the performance of their marriage ceremonies.

Of course it would be preposterous to infer from this that the Dissenters so marrying conform, in other respects to the doctrine and discipline of the Church of England—the fact being notoriously the reverse. It only shows that partly from the influence of long prevailing practice, partly from notions of fashion and respectability, great number of Dissenters prefer being married by the regular functionary and in the orthodox form,—by a clergyman of the establishment in the parish church.

Motives of this class operate quite as strongly in the East as in the West, and it will be the strongest possible proof of the influence of the Aga over the Kojah community, if he ultimately succeeds in inducing them to abandon the long established and convenient practice of celebrating their marriages before the Suni Kazees.

As to the argument that, though "Takiah" might account for such compliance with Suni practices in times of persecution, yet it could not account for their continuance after the dread of persecution had disappeared—this reasoning can have no force with those who consider the all but omnipotent power of use and wont in the ordinary usages of social life, and who reflect on the long continuance of practices and institutions (and that not only in the East) long after the reason of their first establishment, and all sufficient grounds for their perpetuation, have passed away.

It appears to me that, in the presence of such considerations as these, the established fact of the performance by the Khojahs, from the beginning, of their funeral and marriage rites after the fashion of the Sunis, has no appreciable bearing on the question as to what, from the beginning, were their religious opinions and tenets.

(15.) It is much the same with the inference endeavoured to be drawn from the erection and maintenance, since A.D. 1823 of the Suni mosque in the old Khojah burial ground of Bombay. That this mosque was dedicated as a Suni mosque (though without the usual Suni dedicatory inscription containing the names of the first three Caliphs) and that it was used and attended by a certain limited portion of the Khojah community of Bombay, for the celebration of worship in Suni form—is quite clear upon the evidence. But this does not touch the question, even of the religious belief of the bulk of the Khojah population of Bombay from 1823 to 1864, far less the sole question with which this enquiry is really concerned, viz., the religious belief of the Khojahs in their origin as a distinct community.

This mosque was built in the old Khojah burial ground, and by the great majority of the Khojah community of Bombay it was only used, as the evidence clearly shows, for *funeral* purposes. The small minority—the party of the relators and plaintiffs—the wealthy Khojahs of Bombay who for a couple of generations or so have adopted the respectable and orthodox faith of the Sunis—they, indeed, habitually frequented this mosque for the purposes of religious worship. But the mass of the Khojah community of Bombay still continued, as of old, to worship in their Jumat Khana, where, as the evidence shows, they prayed in Shia fashion with their arms to their sides, bowed their heads in prayer on moulds made of the dust of Kerbela, occasionally partook of water mixed with that sacred earth, and three times a day recited, in the Dowa, the long bead roll of the ancestors of their 'Moorshed,' Aga Khan, the hereditary chief of the Ismailis.

As, for funeral purposes, the whole community used this mosque and also the services of the officiating Suni Moola, it was but natural and reasonable that that functionary should be paid (as in fact he *was* paid) by the Mukhi and Kamaria on account of the Jumat, but from such a payment as this it would be preposterous, in the face of such facts as have been established by evidence in this case, to infer that the Suni form of Mahometanism was or ever had been the religion of the Khojah community of Bombay.

(16.) From the above circumstances then (performance *i. e.* of funerals and marriages in Suni fashion) and the existence for 42 years in Bombay of a Suni mosque attended by a part of the Bombay Khojahs no clear inference can be drawn as to the original religious opinions of the Khojah community. *There are, however, other practices of a religious nature, from the observance or non-observance of which by the Khojahs, the inference as to their religious opinion is almost irresistibly strong.*

Take the Hadj, or pilgrimage to Mecca, for instance. If there be one religious duty which more than any other is regarded as imperative on all Sunis having the means and ability to fulfil it, it is the Hadj or pilgrimage to Mecca. Once at least in his life every Suni who can afford to do so

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is bound by every principle of religious duty to visit the spot, which to Sunis is the most sacred in the whole habitable globe. That the Sunis of India are not less zealous than those of other parts of the East in the performance of this duty is clearly proved by the vast stream of pilgrims which, except during the prevalence of the South-western Monsoon, makes its way from all the large ports of India across the Arabian Sea to Jeddah, and thence to Mecca.

Now what is the case with the Khojahs? Why, the evidence is that not more than eight or ten Khojahs in all can be named who from any part of India and the East have ever made the Hadj or pilgrimage to Mecca; and yet these same people, according to the same evidence, go in hundreds, nay in thousands, to Kerbela, a pilgrimage quite as difficult, costly, and dangerous as that to Mecca, and which, though regarded by Shias as a pious duty, is regarded by Sunis, as a superstitious act of folly, even if it be not a positively prohibited and unlawful practice.

And then what is to be said of the prayers performed three times a day, (not five times) in all the Jumat Khanas of the Khojahs, and with arms held down to the sides, not crossed on the breast; of the prostrations on moulds made of the dust of Kerbela, the solemn drinking at stated anniversaries of water mixed with the dust of Kerbela—of the refusal to mingle in the Suni mummeries of the Mohurrum, the mourning at home or in their Jumat Khanas over the memory of Hoossein, the "Shehâd" or martyr—the martyr done to death by those whom the Sunis venerate as the lawful Caliphs or successors of the Apostle of God?

The people who do these things—the people who omit to perform the Hadj but who crowd to Kerbela—the people who are zealous for the performance of all the most distinctive religious practices of the Sheas but who neglect to observe the most distinctive of all the religious practices of the Sunis, these people are not and cannot be Sunis—they may be either Shias, or Shia Imamee Ismailis—and the evidence in this case clearly shows they are the latter.

One final proof may be adduced on this point, and that is the practice of making pilgrimages to Durkhana—a practice which, as has already been shown, was habitual with the Khojahs from the beginning. Until Aga Khan left that country in 1839-40 these pilgrimages were always made to some place or other in *Persia*, the country in which from the fall of Alamut till the flight of Aga Khan, the hereditary chiefs of the Ismailis have throughout as a rule resided. Now, if there be one thing more than another which a Suni religiously avoids, it is the setting his foot without compulsion, on the heretical soil of Persia. A striking illustration of this is to be found in a work which I have always regarded as one of the most instructive and entertaining in the whole range of Oriental Literature,—"The Autobiography of the Emperor Baber," the celebrated conqueror and founder of the Mogul dynasty (1 vol. 4 to London, 1826) translated partly by Dr. Leyden but principally by Mr. William Erskine—the latter the son-in-law of Sir James Mackintosh and the father of the present accomplished member of the Bombay Council—the Honourable Clauins Erskine. In a note to the 244th page of that most interesting work Mr. Erskine writes as follows: "An Usbek Moola (from Bokhara) whom I consulted" (in Bombay) "had just made the pilgrimage to Mecca. On my enquiring if he had passed through Persia, *he expressed* great horror. I found that to avoid touching the soil of Persia, he had gone from Bokhara to Khokan, thence to Cashgar, thence to Astrakhan, thence by the Crimea Constantinople. He then went by sea to Alexandria and joined the caravan of Cairo. I saw him in Bombay whither he had come from Jeddah, after making the Hadj. He was then preparing to return home by Delhi, Lahore and Peshawur *in order to avoid coming into contact with the Persian Shias.*"

And yet the Court is asked to believe that a community which was from the beginning in the habit of making pilgrimages to various parts of Persia was also from the beginning Suni, and this too, though the object of the pilgrimages was to pay devout homage to the hereditary Imam of the Ismailis, a personage whom all orthodox Sunis regard as a very chief and prince of heretics.

It is unnecessary to add anything more. The clear conclusion at which I have arrived upon a full consideration of the evidence before me is this—*that the Khojahs never were Sunis, but that from the beginning they have been and (with the exception of the relators and plaintiffs their followers in Bombay) still are Shias of the Imamee Ismaili persuasion.*

(17.) And this in effect disposes of the whole case against the relators and plaintiffs. Fully conceding to Mr. Scott the authority of the cases and dicta he cited on this point, it appears to me that they are not applicable to the present case. This is not a case in which the plaintiff has mistaken his remedy, but one in which he has failed in his proof. The relators and plaintiffs in this case are quite right in the stand-point they have assumed, viz., that the Khojah sect is a community held together and distinguished by certain religious opinions. Where they have failed is in proving that these religious opinions are those of the Suni Mahometans.

The Court is now in a position to give an adequate description of the Khojah sect; *it is a sect of people whose ancestors were Hindu in original; which was converted and has throughout abided in the faith of the Shia Imamee Ismailis; and which has always been and still is bound by ties of spiritual allegiance to the hereditary Imams of the Ismailis.*

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In order to enjoy the full privileges of membership in the Khojah community all the terms of the above description must be complied with; a person, more especially, who is not a Shia of the Imamee Ismaili persuasion is, to use, with a reversed application, the language of the 5th paragraph of the prayer, "not entitled unto, nor ought he to have any share or interest" in, the public property of the Khojah community "or any voice in the management thereof."

Mr Anstey was quite right when he said, "*If the Khojahs are Sunis we (the relators and plaintiffs) succeed, if they are not Sunis, we fail.*"

18.) In fact there is no ground left upon the evidence, which the relators and plaintiffs can seek relief from s Court either in its charitable, or any other jurisdiction. Looking, for instance, at the Khojah community of Bomy in an *educational* point of view, no case for the interence of the Court has been made out.

No deed, writing, or scrap of paper of any kind was proced showing any gifts of property to the Khojah Jumat Bombay with an ulterior destination to be applied in the tablishment or maintenance of schools for the public use d benefit of the whole community.

As no proof was given of any such *express* trust created e, of course, could be given of any such express trust lated.

But was there any proof of an implied trust of this kind—y proof of the existence in fact at any time of any school aintained out of the public monies of the community r the general educational purpose of the community?

No proof of this kind was offered; there was, indeed, and e still is, a school held in a building adjoining the iat Khana and open apparently to all children of the jah community, but the evidence is that this school originally established, and has been throughout mained, by the *private* munificence of Mr. Cassumbhoy thoobhoy and three or four other wealthy Khojahs of ie party of the relators and plaintiffs. Moreover, as to is school, it was clearly and positively stated by witness I. that the relators and plaintiffs had no complaint tever to make.

).) Then look at the Khojah community of Bombay *eleemosynary* institution, and the result is the same. , again, there is no proof whatever of there ever havеen any express gifts in trust for the poor of the unity; but there is proof that the poor of the comity have, in fact, long enjoyed a certain amount of atenance and support at the public expense. They been allowed free quarters on the ground-floor of the iat Khana and some other public buildings belonging he Jumat; they frequently receive relief in the form ood and clothing; and they are buried in the Khojah ial ground at the public expense.

But the evidence is clear and decisive that whatever benefit in the way of alms and maintenance the poor of the Khojah community have ever enjoyed, they enjoy still in as ample a measure as at any former time; and there has been no kind of proof that these benefits have been in the slightest degree interfered with by any act or omission of the first defendant or his adherents.

(20.) It remains, then, only to consider the prayer for an injunction. This, again, is to a great extent, if not entirely, disposed of by the conclusions already drawn from the evidence in this case.

In so far, for instance, as it seeks to restrain the first defendant from interfering with the election of Mukhi and Kamaria, the evidence clearly shows that it is, and throughout has been, the custom in all the Khojah Jumats to consult the "Moorshed" or his agents before appointing either of these important functionaries. Considering the relation, now fully ascertained by the evidence, in which the hereditary head of the Ismailis, the Sirkar Sahibi, has always stood to the Khojah community, and considering that the Mukhi and Kamaria (as the evidence also shows) are the officers specially charged with collecting and administering the monies raised on the Sirkar Sahibi's account, I can see no ground whatever for an injunction in the circumstances—(and nothing more is proved), that these officers are not, as a rule, appointed without consulting, either the Moorshed, or, in his absence, his lawfully constituted agents.

As to that part of the prayer for an injunction which asks the Court to intervene between the Khojahs, who on the one side are ready to make, and the Aga, who on the other side is willing to receive, voluntary offerings and customary contributions it will not bear, and does not require, any serious discussion.

As we have already seen, the great body of the Khojahs, unless they thought they were making payments to and for the benefit primarily of their Sirkar Sahibi, would not contribute a single pie towards the public expenses of the community. To interfere therefore in the way desired would be simply, even if such an interference could be carried out, to reduce the Khojah community, as a public community, to insolvency. But virtually it could not be carried out, and this Court has too much respect for itself to issue an order of this kind, which would be a mere *brutum fulmen*, liable to almost infinite modes of evasion, and only enforceable, if at all, by issuing attachments against more than two-thirds of the whole Khojah community of Bombay.

If Government, indeed, should be of opinion, that the receipt of some £10,000 a year by Aga Khan, while continuing to reside in Bombay, from the Khojah communities dispersed through India and the East, is, as suggested by the learned leading counsel for the relators and plaintiffs, on political grounds objectionable, they have the remedy in their own hands. But till they have applied such

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remedy (and I venture to think it extremely doubtful if they ever will) either by removing Aga Khan from Bombay, or prohibiting such payments being made to him while he remains here, I can see no ground on which the making of such payments on the one side, or demanding them on the other, can be made the subject of an injunction by this court.

The only point remaining relates to the subject of outcasting or excommunication. Now, the evidence shows that this extreme and ultimate mode of punishing a violation of the conditions of caste membership, although doubtless never in fact resorted to except with the concurrence and by the direction of the Spiritual Head or Moorshed of the Khojahs, is, in form, the act of the whole Khojah community in Jumat assembled. Allarukia Soomar (witness No. 18), the Mukhi of the Bombay Jumat, was much pressed in cross-examination as to the point, whether, if the Jumat considered a direction by the Aga to turn any Khojah out of caste unjust or ungrounded, they would refuse to comply with such direction. The witness had considerable difficulty in contemplating the possibility of such a case (as much difficulty as a strong Ultramontane Romanist might have in conceiving that the Pope could possibly go wrong in any matter relating to the government of the Church) but when at length he had been brought to entertain the hypothesis, his answer was that, in such case, the Jumat would first protest, and if that proved vain, would finally refuse to comply with a direction to outcaste, which they felt to be unjust.

No doubt in several passages of his answer the first Defendant pitches his claims pretty high. Spiritual heads of communities are not generally remarkable for the modesty with which they state their pretensions. But in the 30th paragraph of his Answer he sets forth his claim in accordance with the mode in which excommunication appears upon the evidence to have been uniformly carried out in the Khojah community. In that paragraph after stating that "he claims to be and is the Spiritual Head of the Khojahs," he goes on to say "that all Khojahs resisting my doctrines" (i. e the doctrines of the Shia Imamee Ismaili faith) are liable to be expelled "at my request by the Jumat from the "Khojah caste."

It is quite clear that in every community having to a certain extent a religious character—and such the evidence shows to be the case with the Khojah community—there must be vested an ultimate power, in cases of obstinate refusal to comply with the defined conditions of communion, to deprive recusants of the privileges of communion, in other words to excommunicate them; nor do I see how such a power can be more properly exercised than by the act of the whole Community on the suggestion and by the direction of its Spiritual Head. That Aga Khan as the Spiritual Head of the Khojahs has, in my judgment, been clearly made out by the evidence, and to say that, as such, he is not to have a potential voice in determining who, on religious grounds, shall or shall not remain members of the Khojah community, appears to me entirely unreasonable.

In fact in every community, whether of a religious nature or not—whether Church or Chapel, Caste or Club—there must, as requisite for the preservation of the community and as inherent in the very conception of a community necessarily exist a power, not indeed to be exerted except in extreme cases and on justifying grounds, of depriving of the privileges of membership those who persistently refuse, after due notice and warning, to comply with the ascertained conditions of membership, to which, by very fact of being members of the community, they must be held to have given an implied, if not an express, consent.

As it does not appear to me on the evidence, that any other or greater stretch of power than this has ever been exerted by the Khojah community under the direction of its Spiritual Head, I must decline to grant the injunction on this ground, nor is there any ground whatever on which the injunction, as prayed, ought in my judgment to be allowed.

(21.) Upon the whole case therefore the decree which the Court must pronounce is quite clear. It is—

That this suit be dismissed, as against the first defendant His Highness Aga Khan, as against Allarukia Soomar and his co-answering defendants, as against Assoo Gangjee, with costs, as to all the said defendants, to be paid by the relators and plaintiffs.

As against the other defendants on the record, not in the same interest as the defendants above named, the decree is that the suit be dismissed, but without costs.

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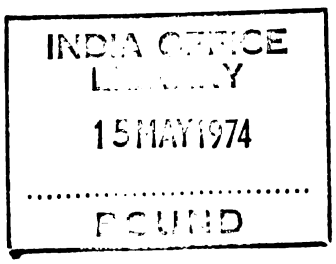

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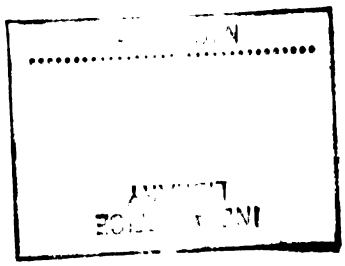

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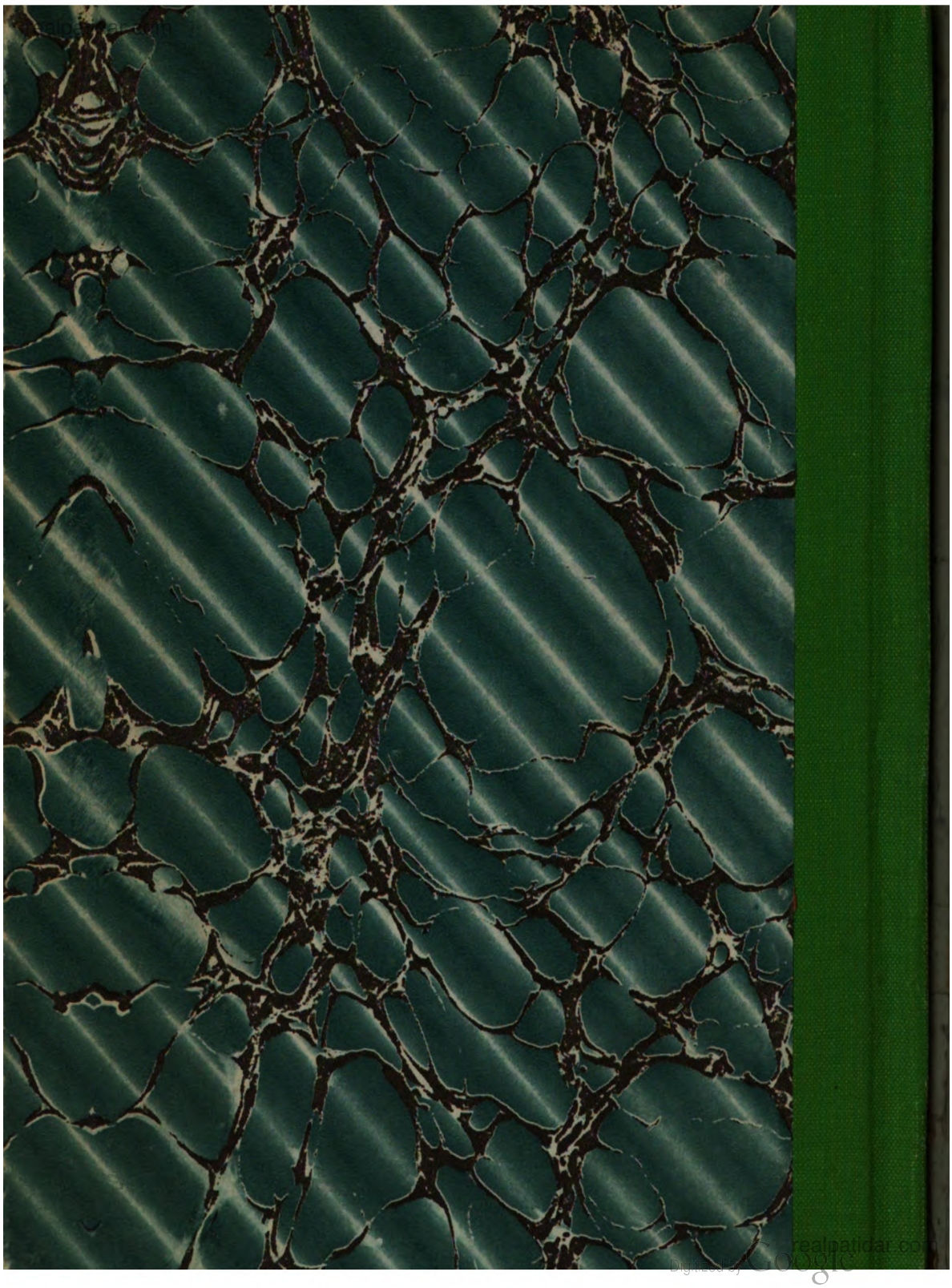

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